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DEPOSITORY INSTITUTION EXAMINATION IMPROVEMENT ACT

TRUTH IN SAVINGS ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE

OF THE

COMMITTEE ON
BANKING, FINANCE AND URBAN AFFAIRS
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

SECOND SESSION

ON

H.R. 2282

A BILL TO PROVIDE FOR THE UNIFORM DISCLOSURE OF THE RATES OF INTEREST WHICH ARE PAYABLE ON SAVINGS ACCOUNTS

AND

H.R. 3567

A BILL TO IMPROVE THE QUALITY OF EXAMINATIONS OF DEPOSITORY INSTITUTIONS, AND FOR OTHER PURPOSES

JUNE 4 AND 5, 1986

Serial No. 99-79

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DEPOSITORY INSTITUTION EXAMINATION IMPROVEMENT ACT

TRUTH IN SAVINGS ACT

WEDNESDAY, JUNE 4, 1986

House of Representatives,
Subcommittee on Financial Institutions
Supervision, Regulation and Insurance,
Committee on Banking, Finance and Urban Affairs,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m., in room 2128, Rayburn House Office Building, Washington, DC, Hon. Fernand J. St Germain (chairman of the subcommittee), presiding.

Present: Chairman St Germain; Representatives Barnard, Wylie, McKinney, and Wortley.

Also present: Representatives Lundine and Carper of the full committee.

Chairman St Germain. The subcommittee will come to order.

This morning we open hearings on two different, but equally important pieces of legislation—H.R. 2282, the Truth in Savings Act, which has long been championed by our colleague, Richard Lehman of California, and an amended version of H.R. 3567, the Depository Institution Examination Improvement Act, introduced originally by Representatives Carper of Delaware and Lundine of New York.

Mr. Lehman's bill is an attempt to give consumers the information necessary to make rational judgments on where and how best to invest their savings in depository institutions. Too often consumers have been confronted by advertisements which purposely or inadvertently misstate, obscure, and exaggerate interest rates and yields on various savings instruments.

Admittedly, it is a difficult area where we must try to assure the consumer meaningful and accurate information without burdening advertisements with new complexities and without discouraging legitimate competition for the savings dollar.

However, I feel strongly that the consumer—including the smaller savers—are entitled to a clear unequivocal statement of what they can expect to earn on their savings. There shouldn't be any flimflam in this area.

Mr. Carper and Mr. Lundine's bill is an attempt to improve the strength of our corps of depository institutions examiners and is cosponsored by some 34 Members of the Banking Committee. This represents a clear statement of the longstanding support of this subcommittee for our frontline troops in the battle to maintain safe and sound financial institutions. I am among them because I feel strongly that the examination efforts of the Federal financial regulatory agencies must be upgraded. Over the past decade and a half, I have chaired long and thorough hearings into depository institution failures, including USNB, Franklin, Penn Square, Continental, and Golden Pacific. Through all those years, I have pushed, shoved, and done everything possible to encourage these agencies to give examination and supervision activities stronger support.

One of the measures I strongly supported was establishment of the Federal Financial Institutions Examination Council. Its purpose was to improve examiner resources and coordinate agency actions. I note with approval that the Examination Council is now studying ways to make working conditions for examiners more attractive. I commend the present Council Chairman, Edwin Gray, for initiating this effort and look forward to the results of this study.

Some provisions of the Carper/Lundine bill would remove the regulatory agencies further from budget, appropriation, and other controls exercised by the legislative and executive branches. This, of course, would mean relief from the strictures of Gramm-Rudman which now has a stranglehold on all activities and programs of the Federal Government from education, housing, agriculture, defense to the wide array of Federal regulatory agencies.

While we all appreciate the problems created by Gramm-Rudman for the financial regulatory agencies, we must be careful that our efforts to solve these problems do not lead to any weakening of other oversight and control over these agencies. We are trying to improve the efficiency of these agencies, not diminish their accountability.

[The text of H.R. 2282 and H.R. 3567 follow:]

I

99TH CONGRESS
1ST SESSION

H. R. 2282

To provide for the uniform disclosure of the rates of interest which are payable on savings accounts.

IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 1985

Mr. LEHMAN of California (for himself, Mr. ST GERMAIN, Mr. GONZALEZ, Mr. ANNUNZIO, Mr. MITCHELL, Mr. FAUNTROY, Mr. NEAL, Mr. LAFALCE, Mr. LUNDINE, Ms. OAKAR, Mr. VENTO, Mr. GARCIA, Mr. ROEMER, Mr. COOPER, Ms. KAPTUR, Mr. TORRES, Mr. MANTON, Mr. FUSTER, Mr. WORTLEY, Mr. MCKINNEY, Mr. ACKERMAN, Mr. BATES, Mrs. BOXER, Mr. BERMAN, Mr. BONIOR of Michigan, Mr. BRYANT, Mr. BROWN of California, Mrs. BURTON of California, Mrs. BYRON, Mr. CONTE, Mr. CONYERS, Mr. COELHO, Mr. DE LUGO, Mr. DYMALLY, Mr. DIXON, Mr. DOWNEY of New York, Mr. DURBIN, Mr. DWYER of New Jersey, Mrs. COLLINS, Mr. DELLUMS, Mr. EDWARDS of California, Mr. FOGLIETTA, Mr. FAZIO, Mr. FROST, Mr. GUARINI, Mr. HAWKINS, Mr. HAYES, Mr. HEFTEL of Hawaii, Mr. KOSTMAYER, Mr. LELAND, Mr. LEVINE of California, Mr. MARTINEZ, Mr. MACKAY, Mr. MARKEY, Mr. MILLER of California, Mr. MINETA, Mr. MOAKLEY, Mr. MOODY, Mr. MRAZEK, Mr. MURPHY, Mr. OWENS, Mr. PANETTA, Mr. PRICE, Mr. RANGEL, Mr. ROYBAL, Mr. SAVAGE, Mr. SAXTON, Mr. SCHEUER, Mr. SEIBERLING, Mr. STARK, Mr. STOKES, Mr. STUDDS, Mr. TOWNS, Mr. WAXMAN, Mr. WEISS, Mr. WHEAT, Mr. WISE, and Mr. YOUNG of Alaska) introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

---

A BILL

To provide for the uniform disclosure of the rates of interest which are payable on savings accounts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Truth in Savings Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress hereby finds that—

(1) economic stability would be enhanced, competition between depository institutions would be improved, and the ability of the consumer to make informed decisions regarding savings instruments would be strengthened if there was uniformity in the disclosure of the terms and conditions on which interest is paid on, and fees are assessed against, deposit accounts; and

(2) economic stability would be enhanced and consumers would be encouraged to increase their rate of savings by the development of a single, consistent formula for calculating the rate of interest and annual percentage yield paid on all deposit accounts at all depository institutions.

(b) PURPOSE.—It is the purpose of this Act to require the clear and uniform disclosure of the rates of interest which are payable on deposit accounts, and the fees that are assessable against such deposit accounts, by depository institutions, so that consumers can make a meaningful comparison between the competing claims of depository institutions regarding deposit accounts.

SEC. 3. DISCLOSURE OF INTEREST RATES AND TERMS OF ACCOUNTS.

(a) In General.—Notwithstanding any other provision of law, each advertisement, announcement, or solicitation made by any depository institution regarding the rate of interest which is payable on any account shall—

(1) state the annual percentage yield and the method by which interest is compounded;

(2) state the annual rate of simple interest and the period during which such annual rate of simple interest is in effect;

(3) state the frequency with which interest is payable to the account holder;

(4) state all minimum balance requirements;

(5) give equal prominence to all annual percentage yields and annual rates of simple interest (including the periods during which such annual rates of simple interest will be in effect) contained in such advertisement, announcement, or solicitation;

(6) include the following statement: "Early withdrawal penalties, transaction fees, returned check fees, and other terms of this account could substantially affect the actual yield you receive from this account. A schedule of these fees and penalties is available upon request from (insert the name of the depository institution)."; and

(7) in the case of certificates of deposit and other accounts with a stated maturity of less than one year, either—

(A) exclude the annual percentage yield on the account; or

(B) include the following statement: "The yield on this account is based upon compounding of the account at the stated interest rate for an entire year. The actual yield will be less, based on the length of time your money is in the account.".

(b) Disclosure of Annual Percentage Yield.—Except as provided in subsection (a)(7), the annual percentage yield shall be stated before the annual rate of simple interest in any advertisement, announcement, or solicitation subject to subsection (a).

(c) Requests for Information.—In any case in which a person requests information on any account which is offered by a depository institution and on which interest is paid, the depository institution involved shall give such person a written summary of the information required for such account under subsection (a).

SEC. 4. TERMS AND CONDITIONS OF ACCOUNTS.

(a) In General.—Each depository institution shall maintain a written schedule of all fees, charges, and terms and conditions which apply to each type of account and service routinely offered by such depository institution. Such schedule shall include, but is not limited to, the following information:

(1)(A) Any minimum balance required to be maintained in order to avoid fees or charges.

(B) The method for determining such minimum balance.

(C) A clear example of how such minimum balance is calculated.

(2) Any monthly maintenance or other periodic charge for an account.

(3) Any charge per transaction.

(4) Any charge for a check which is drawn on an account and which is dishonored upon presentment.

(5) Any charge for a check which is deposited in an account and which is dishonored upon presentment.

(6) Any charge for a stop payment order.

(7) Any charge for an inquiry regarding the balance on an account.

(8) Any charge for the early closure of, or withdrawal from, an account.

(9) Any charge for an inactive account.

(b) DISTRIBUTION OF SCHEDULES.—The schedule described in subsection (a)—

(1) shall be included in the first regularly scheduled mailing to the account holders of each depository institution which occurs not more than 60 days after the effective date of the initial regulations prescribed by the Board under this Act;

(2) shall be mailed to the account holders of such depository institution not less than 30 days before the effective date of any change in such schedule. Such mailing shall include the new schedule and a description of all changes in the previous schedule;

(3) shall be given to each potential customer before an account is opened or a service is rendered; and

(4) shall be given upon request to any individual.

SEC. 5. REGULATIONS.

(a) IN GENERAL.—

(1) Not later than 1 year after the date of the enactment of this Act, the Board shall prescribe regulations—

(A) to carry out the provisions of this Act;

(B) to prevent the circumvention or evasion of such provisions; and

(C) to facilitate compliance with such provisions.

(2) Such regulations shall provide that all annual percentage yields are based on a 365-day period.

(b) ADDITIONAL REQUIREMENTS.—In prescribing such regulations, the Board shall, to the extent necessary and appropriate—

(1) prescribe uniform terminology which shall be used by depository institutions in each advertisement, announcement, or solicitation to describe interest rates and other terms which significantly affect the earnings on an account;

(2) prescribe uniform methods of calculating annual rates of simple interest and annual percentage yields required to be disclosed under this Act, taking into account, where the Board deems it to be appropriate, differences among kinds or classes of savings accounts, including, but not limited to—

(A) time and demand accounts;

(B) accounts of different maturities; and

(C) single rate, split rate, and variable rate accounts; and

(3) consult with both Houses of the Congress, the Consumer Advisory Council, and representatives of depository institutions.

SEC. 6. ADMINISTRATIVE ENFORCEMENT.

(a) IN GENERAL.—Compliance with the requirements imposed under this Act shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act—

(A) by the Comptroller of the Currency with respect to national banks;

(B) by the Board of Governors of the Federal Reserve System with respect to member banks of the Federal Reserve System (other than national banks); and

(C) by the Board of Directors of the Federal Deposit Insurance Corporation with respect to any depository institution described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act (other than national banks and member banks of the Federal Reserve System);

(2) section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation) with respect to any depository institution described in clause (v) or (vi) of section 19(b)(1)(A) of the Federal Reserve Act; and

(3) the Federal Credit Union Act, by the National Credit Union Administration Board with respect to any depository institution described in clause (iv) of section 19(b)(1)(A) of the Federal Reserve Act.

(b) ADDITIONAL ENFORCEMENT POWERS.—

(1) For purposes of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in such subsection, a violation of a requirement imposed under this Act shall be deemed to be a violation of a requirement imposed under that Act.

(2) In addition to its powers under any provision of law referred to in subsection (a), each agency referred to in such subsection may exercise, for purposes of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.

(c) REGULATIONS.—The authority of the Board to issue regulations under this Act does not impair the authority of any other agency designated in this section to make rules regarding its own procedures in enforcing compliance with the requirements imposed under this Act.

SEC. 7. DEFINITIONS.

For purposes of this Act—

(1) the term "Board" means the Board of Governors of the Federal Reserve System;

(2) the term "check" means any check, negotiable order of withdrawal, share draft, or other similar item used for purposes of making payments or transfers to third parties or others;

(3) the term "Consumer Advisory Council" means the Consumer Advisory Council established under section 703(b) of the Equal Credit Opportunity Act; and

(4) the term "depository institution" has the meaning given such term in section 19(b)(1)(A) of the Federal Reserve Act.

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I

99TH CONGRESS
1ST SESSION

H. R. 3567

To improve the quality of examinations of depository institutions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 16, 1985

Mr. CARPER (for himself, Mr. LUNDINE, Mr. ST GERMAIN, Mr. WYLIE, Mr. BARTLETT, Mr. BEREUTER, Mr. CHANDLER, Mr. COOPER, Mr. DREIER of California, Mr. ERDREICH, Mr. FRANK, Mr. FUSTER, Mr. GORDON, Mr. HILER, Mr. HUBBARD, Mr. KANJORSKI, Ms. KAPTUR, Mr. LAFALCE, Mr. LEVIN of Michigan, Mr. MCCANDLESS, Mr. MCKINNEY, Mr. MCMILLAN, Mr. MANTON, Mr. MITCHELL, Mr. NEAL, Mr. NELSON of Florida, Mr. RIDGE, Mr. ROTH, Mrs. ROUKEMA, Mr. SCHUMER, Mr. SHUMWAY, Mr. WIRTH, Mr. GROTBERG, and Mr. WORTLEY) introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

---

A BILL

To improve the quality of examinations of depository institutions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Depository Institution Examination Improvement Act of 1985".

SEC. 2. COMPENSATION OF FEDERAL EXAMINERS.

(a) REGIONAL PAY SCALES.—

(1) ESTABLISHMENT OF REGIONS.—The Depository Institutions Examination Council (as redesignated by section 7(a)) shall divide the continental United States into 12 districts which shall approximate the districts of the Federal depository institutions regulatory agencies to the extent such approximation is possible.

(2) STUDY OF COMPARABLE PRIVATE SECTOR PAY SCALES.—

(A) IN GENERAL.—The Council shall conduct a study to determine the amounts of compensation paid to, and the value of employee benefits provided for, accountants and auditors employed in the private sector within each region established under paragraph (1) who perform functions similar to the functions performed by Federal examiners.

(B) FACTORS TO BE TAKEN INTO ACCOUNT.—In making such study, the Council shall identify the relationship between the amounts of compensation paid to and benefits provided with respect to such accountants or auditors and the length of service, the amount of education and training, the amount and the degree of difficulty of the work performed, the extent of supervisory or managerial responsibility, and such other factors as the Council may determine to be appropriate.

(3) CLASSIFICATION OF FEDERAL EXAMINER POSITIONS.—The Council shall devise a system for classifying Federal examiners on the basis of the factors described to in paragraph (2) and such other factors as the Council may determine to be appropriate. In developing such classification system, the Council shall consider the manner in which examiners were classified by the Federal depository institutions regulatory agencies and regional banks, branches, or offices of such agencies before the date of the enactment of this Act.

(4) REGIONAL PAY SCALES REQUIRED TO BE ESTABLISHED.—The Council shall establish a rate of pay for each position in the classification system established under paragraph (3) within each region established under paragraph (1). The rate of pay established for each position within each region shall be comparable to the average amount of compensation paid to private sector accountants and auditors within the region whose positions most closely correspond to the position in the classification system, as determined by the Council on the basis of the results of the study conducted under paragraph (2). In establishing such rates

of pay, the Council shall take into account any difference in the average value of benefits provided on behalf of private sector accountants and auditors and the average value of benefits provided Federal examiners.

(b) REGULATORY AGENCIES REQUIRED TO COMPLY WITH CLASSIFICATION SYSTEM AND PAY SCALE.—Each Federal depository institutions regulatory agency and each regional bank, branch, or office of such agency which employs Federal examiners shall—

(1) assign such Federal examiners to positions in compliance with the classification system established under subsection (a)(3); and

(2) establish pay for such positions in compliance with the regional pay scale established under subsection (a)(4).

(c) TEMPORARY ASSIGNMENTS; TRAVEL ALLOWANCES.—The Council shall prescribe by regulations the manner in which—

(1) rates of pay shall be determined for temporary assignments of Federal examiners outside the region in which they are regularly employed; and

(2) the amounts allowable for travel expenses shall be determined for Federal examiners performing duties away from their regular places of employment.

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Subsection (l) of section 11 of the Federal Reserve Act (12 U.S.C. 248(l)) is amended—

(A) by striking out "shall be fixed" and inserting in lieu thereof "shall be fixed, subject to section 2(b) of the Depository Institution Examination Improvement Act of 1985,"; and

(B) by striking out the proviso at the end.

(2) The second paragraph of section 5240 of the Revised Statutes (12 U.S.C. 481) is amended by striking out "with the approval of the Secretary of the Treasury".

(3) The third paragraph of section 5240 of the Revised Statutes (12 U.S.C. 482) is amended by striking out "The Comptroller" and inserting in lieu thereof "Subject to section 2(b) of the Depository Institution Examination Improvement Act of 1985, the Comptroller".

(4) The first sentence of the paragraph designated the "Fifth" of section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819) is amended by inserting "(subject to section 2(b) of the Depository Institution Examination Improvement Act of 1985)" after "compensation".

(5) Subsection (a) of section 12 of the Federal Home Loan Bank Act (12 U.S.C. 1432(a)) is amended by striking out "and fix the compensation" and inserting in lieu thereof "and (subject to section 2(b) of the Depository Institution Examination Improvement Act of 1985) fix the compensation".

(6) Section 19 of the Federal Home Loan Bank Act (12 U.S.C. 1439) is amended—

(A) by striking out "and fix the compensation" and inserting in lieu thereof "and (subject to section 2(b) of the Depository Institution Examination Improvement Act of 1985) fix the compensation"; and

(B) by striking out the second sentence.

(7) Paragraph (4) of section 209(a) of the Federal Credit Union Act (12 U.S.C. 1789(a)) is amended by striking out "fix their compensation" and inserting in lieu thereof "(subject to section 2(b) of the Depository Institution Examination Improvement Act of 1985) fix their compensation".

(8) Paragraph (1) of section 1008(c) of the Federal Depository Institutions Examination Council Act of 1978 (as redesignated by the amendment made by section 7(b)(1)) (12 U.S.C. 3307(c)(1)) is amended by striking out "subject to the provisions of title 5, United

States Code, relating to the competitive service, classification, and General Schedule pay rates,".

SEC. 3. INDEPENDENT AGENCY STATUS OF FEDERAL DEPOSITORY INSTITUTIONS REGULATORY AGENCIES.

(a) Congressional Purpose.—It is the purpose of this section to provide, and (with respect to certain Federal depository institutions regulatory agencies) to clarify that certain laws in effect before the date of the enactment of this Act shall be construed as providing, that—

(1) because the operations of Federal depository institutions regulatory agencies are paid with funds derived from assessments on the depository institutions which such agencies regulate and not from public funds, such agencies shall not be subject to the budget and appropriation review procedures established for agencies which receive public funding; and

(2) because the funds used to pay and provide benefits for employees of such agencies are derived from such assessments and not from public funds, such employees shall not be subject to the laws and regulations of the United States applicable to public employees (including any regulation prescribed by the Office of Personnel Management or the Secretary of the Treasury relating to the rate of pay of officers and employees of the United States).

(b) Independent Agency Status.—

(1) Officers and employees not subject to civil service laws.—Title 5, United States Code, is amended—

(A) in section 103 (defining Government corporation), by inserting before the semicolon the following: "(other than the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation)";

(B) in section 104 (defining independent establishment), by striking out "or the Postal Rate Commission" and inserting in lieu thereof ", the Postal Rate Commission, the Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board, and the National Credit Union Administration";

(C) in section 105 (defining Executive agency), by adding at the end thereof the following new sentence: "Such term does not include the Office of the Comptroller of the Currency.";

(D) in section 2104 (defining officer), by adding at the end thereof the following new subsection:

"(c) Federal Depository Institutions Regulatory Agencies.—Except to the extent otherwise provided by an Act enacted after the date of the enactment of this subsection which makes explicit reference to this subsection, no officer of any of the following entities shall be treated as an officer for purposes of this title:

"(1) Board of Governors of the Federal Reserve System.

"(2) Office of the Comptroller of the Currency.

"(3) Federal Deposit Insurance Corporation.

"(4) Federal Home Loan Bank Board.

"(5) Federal Savings and Loan Insurance Corporation.

"(6) National Credit Union Administration."; and

(E) in section 2105 (defining employee), by adding at the end thereof the following new subsection:

"(f) FEDERAL DEPOSITORY INSTITUTIONS REGULATORY AGENCIES.—Except to the extent otherwise provided by an Act enacted after the date of the enactment of this subsection which makes explicit reference to this subsection, no employee of any of the following entities shall be treated as an officer for purposes of this title:

"(1) Board of Governors of the Federal Reserve System.

"(2) Office of the Comptroller of the Currency.

"(3) Federal Deposit Insurance Corporation.

"(4) Federal Home Loan Bank Board.

"(5) Federal Savings and Loan Insurance Corporation.

"(6) National Credit Union Administration.".

(2) AGENCIES NOT SUBJECT TO BUDGET AND APPROPRIATION REVIEW.—Section 1101 of title 31, United States Code, is amended by striking out "or the Supreme Court" and inserting in lieu thereof "the Supreme Court, or any agency which is subject to audit by the Comptroller General under section 714".

(c) PRIOR ACT SHALL NOT APPLY.—The Act entitled "An Act extending the classified executive civil service of the United States." and approved November 26, 1940, and any Executive order issued under such Act shall not apply to any officer or employee to whom the amendments made subparagraphs (D) and (E) of subsection (b)(1) apply.

(d) ASSESSMENTS TO PAY EMPLOYEES.—In the case of any assessment imposed by any Federal depository institutions regulatory agency on the depository institutions regulated by such agency, the portion of the amount of any such assessment which is used to provide compensation and benefits for officers and employees of such agency shall not be taken into account for purposes of any limitation contained in any other law on the amount of such assessment.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1)(A) Subsection (a) of section 714 of title 31, United States Code, is amended by striking out "and" and by inserting before the period the following: ", the Federal Home Loan Bank Board, the Federal Home Loan Banks, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration".

(B) The heading for such section 714 is amended to read as follows:

"**SEC. 714. AUDIT OF FEDERAL DEPOSITORY INSTITUTIONS REGULATORY AGENCIES AND DEPOSITORY INSTITUTIONS EXAMINATIONS COUNCIL.**".

(2) Subsection (b) of section 7 of the First Deficiency Appropriation Act, fiscal year 1936 (15 U.S.C. 712a(b)) is amended by striking out paragraphs 1. and 11. and by redesignating paragraphs 2. through 12. as paragraphs (1) through (10), respectively.

(3) The third proviso of the provision appearing under the heading "FEDERAL HOME LOAN BANK ADMINISTRATION" in title I of the Independent Offices Appropriation Act, 1944 (12 U.S.C. [illegible]a) is amended by striking out ", subject to subsections (a) and (b) of section 7 of the First Deficiency Appropriation Act, 1936".

(4) Paragraph (5) of section 402(c) of the National Housing Act (12 U.S.C. 1726(c)(5)) and section 19 of the Federal Home Loan Bank Act (12 U.S.C. 1439) are each amended by striking out the last sentence.

(5) Subsection (b) of section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)) is amended by adding at the end thereof the following new paragraph:

"(9) Amounts Received Not Appropriated Funds.—No amount received by the Corporation pursuant to any assessment under this section may be construed to be Government funds or appropriated money.".

(6) Section 404 of the National Housing Act (12 U.S.C. 1727) is amended by adding at the end thereof the following new subsection:

"(j) Amounts Received Not Appropriated Funds.—No amount received by the Corporation pursuant to any premium assessed under this section or any deposit required under this section may be construed to be Government funds or appropriated money.".

(7) The last sentence of section 19 of the Federal Home Loan Bank Act (12 U.S.C. 1439) (as amended by paragraph (4)) is amended by inserting before the period "; amounts received pursuant to such assessments may not be construed to be Government funds or appropriated money".

(8) Subsection (a) of section 18 of the Federal Home Loan Bank Act (12 U.S.C. 1439(a)) is hereby repealed.

(9) Subsection (b) of section 18 of the Federal Home Loan Bank Act (12 U.S.C. 1439(b)) is amended by adding at the end thereof the following new sentence: "No amount received by the board pursuant to any assessment under this subsection may be construed to be Government funds or appropriated money."

(10) Section 105 of the Federal Credit Union Act (12 U.S.C. 1755) is amended by adding at the end thereof the following new subsection:

"(f) AMOUNTS RECEIVED NOT APPROPRIATED FUNDS.—No amount received by the Board pursuant to any fee assessed under this section and no amount referred to in subsection (e)(3) shall be construed to be Government funds or appropriated money.".

(11) Subsection (c) of section 18 of the Federal Home Loan Bank Act (12 U.S.C. 1438) is amended—

(A) in paragraph (1), by striking out ", and subject to any limitation hereon which may hereafter be imposed in appropriation Acts,";

(B) in paragraph (5), by striking out ", and obligations and expenditures of the board and such agencies in connection with this subsection shall not be considered as administrative expenses"; and

(C) in the first sentence of paragraph (6), by striking out "(A) annually prepare and submit a budget program as provided in title I of the Government Corporation Control Act with regard to wholly owned Government corporations, and for purposes of this sentence, the terms 'wholly owned Government corporations' and 'Government corporations', wherever used in such title, shall include the board, and (B)"; and

(D) in the second sentence of paragraph (6), by striking out "first budget program shall be for the first full fiscal year beginning on or after the date of the enactment of this subsection, and the".

(12) Paragraph (6) of the Reorganization Plan Numbered 6 of 1961, as ratified and affirmed by the Act entitled "An Act to prevent disruption of the structure and functioning of the Government by ratifying all reorganization plans as a matter of law." and approved October 19, 1984 (98 Stat. 2705), is hereby repealed.

(13) The provision appearing under the heading "LIMITATION ON ADMINISTRATIVE AND EXAMINATION EXPENSES, FEDERAL HOME LOAN BANK

BOARD" in title II of the Independent Offices Appropriation Act, 1961 (12 U.S.C. 1438a) is amended by striking out the second proviso.

(14) Paragraph (9) of section 5(d) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)(9)) is amended by striking out the last sentence.

(15) Paragraph (3) of section 407(m) of the National Housing Act (12 U.S.C. 1730(m)(3)) is amended by striking out the second to last sentence.

(16) Paragraph (6) of section 408(h) of the National Housing Act (12 U.S.C. 1730a(h)(6)) is hereby repealed.

(17) Paragraph (1) of section 209(b) of the Federal Credit Union Act (12 U.S.C. 1789(b)) is hereby repealed.

(18) Paragraph (2) of section 9101 of title 31, United States Code, is amended by adding at the end thereof the following new subparagraph:

"(K) The Federal Savings and Loan Insurance Corporation.".

(19) Paragraph (3) of section 9101 of title 31, United States Code, is amended by striking out subparagraph (E) thereof.

(20) Section 714 of title 31, United States Code, is amended—

(A) by striking out "insured bank" each place such term appears and inserting in lieu thereof "insured depository institution"; and

(B) by adding at the end thereof the following new subsection:

"(e) Definitions.—For purposes of this section—

"(1) Insured depository institution.—The term 'insured depository institution' means—

"(A) any insured bank (within the meaning given to such term by section 3(h) of the Federal Deposit Insurance Act),

"(B) any insured institution (within the meaning given to such term by section 401(a) of the National Housing Act), and

"(C) any insured credit union (within the meaning given to such term by section 101(7) of the Federal Credit Union Act.

"(2) Bank holding company.—The term 'bank holding company' means any bank holding company (within the meaning given to such term by section 2(a)(1) of the Bank Holding Company Act of 1956) and any savings and loan holding company (within the meaning given to such term by section 408(1)(D) of the National Housing Act).".

(21) Section 324 of the Revised Statutes (12 U.S.C. 1) is amended by striking out ", and shall perform his duties under the general direction of the Secretary of the Treasury".

(22) Section 328 of the Revised Statutes (12 U.S.C. 8) is amended by striking out ", to be appointed and classified by the Secretary of the Treasury,".

(e) EFFECTIVE DATE.—The amendments made by subparagraphs (D) and (E) of subsection (b)(1) shall apply with respect to officers and employees appointed or employed after the date of the enactment of this Act.

(f) TRANSFER OF CIVIL SERVICE EMPLOYEE.—Each Federal depository institutions regulatory agency may establish a procedure for—

(1) transferring out of the civil service any officer or employee of any such agency who would no longer be subject to the provisions of title 5, United States Code, under the amendments made by this section but for the prospective application of such amendments under subsection (e); and

(2) providing such compensation or reimbursement as the agency determines to be fair and equitable to compensate such officer or employee for the loss of any rights or accumulated employee benefits which results from such transfer.

SEC. 4. CONSOLIDATION OF FEDERAL EXAMINER TRAINING.

(a) CONGRESSIONAL POLICY.—It is hereby declared to be the policy of the Congress to consolidate all programs for training Federal examiners (and examiners of such States as may participate in such programs) which may otherwise be conducted by the Federal depository institutions regulatory agencies in one school established and conducted by the Council under section 1006(d) of the Federal Depository Institutions Examination Council Act of 1978 (as redesignated by the amendment made by section 7(b)(1)) in a manner which would—

(1) provide a uniform, high quality education for the Federal examiners employed by each Federal depository institutions regulatory agency; and

(2) make money available for employing additional examiners by eliminating the current duplication of training programs conducted by the Federal depository institutions regulatory agencies in an efficient and cost-effective manner.

(b) PROPOSAL FOR IMPLEMENTING CONSOLIDATED TRAINING PROGRAM.—The Council shall develop a proposal for implementing the policy of the Congress with respect to the consolidation of examiner training in one school. In developing the proposal, the Council shall consider—

(1) whether a standard curriculum would be sufficient for training all Federal examiners or whether

particular training needs exist with respect to each Federal depository institutions regulatory agency which would require additional courses for examiners employed by each such agency;

(2) whether the faculty should consist primarily of professional educators or professional examiners and the extent to which both educators and examiners should be appointed to the faculty;

(3) the manner in which the school would be administered as a consolidated training institution; and

(4) the manner in which the cost of operating the school would be distributed among the Federal depository institutions regulatory agencies.

(c) REPORT TO CONGRESS.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Council shall submit a report of the Council's proposal under subsection (b) to the Committee on Banking, Finance, and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The report shall contain—

(1) a detailed statement of the findings and conclusions of the Council with respect to the implementation of Congressional policy on the consolidation of examiner training in one school;

(2) the Council's recommendations for such legislation as it considers necessary or appropriate in order to consolidate such training in the manner proposed by the Council; and

(3) the amount of money which the Council estimates each Federal depository institutions regulatory agency would save as a result of consolidating the training of Federal examiners in one school.

SEC. 5. GRADUATE DEGREE PROGRAM IN FINANCIAL MANAGEMENT ANALYSIS.

(a) IN GENERAL.—The Council shall study the feasibility of establishing a graduate degree program in financial management analysis for officers and employees of Federal depository institutions regulatory agencies and State depository institutions supervisory agencies. In studying the feasibility of establishing such program, the Council shall—

(1) estimate the cost of establishing and operating such a program;

(2) consider whether—

(A) such program should be conducted directly by the Council or by a Federal depository institutions regulatory agency,

(B) such program should be conducted in conjunction with the training school referred to in section 4(a), or

(C) the Council should enter into an agreement with a private or State institution of higher education to conduct the program and issue any degree established under such program either in conjunction with a similar degree program already conducted by such institution or as separate program; and

(3) consider what minimum requirements should be established for the admission of any individual into the program, including prerequisites relating to the undergraduate or other education of such individual, the experience such individual has had in the field of depository institution examination at the time of such admission, and the length of service with the Federal depository institutions regulatory agency or State depository institutions supervisory agency by which such individual is employed at the time of such admission.

(b) REPORT TO CONGRESS.—

(1) REPORT REQUIRED.—Before the end of the 1-year period beginning on the date of the enactment of this Act, the Council shall submit a report of the Council's study of the feasibility of establishing a graduate degree program in financial management analysis to the Committee on Banking, Finance, and Urban Affairs of the House of Representatives and the Commit-

tee on Banking, Housing, and Urban Affairs of the Senate.

(2) FINDINGS AND CONCLUSIONS.—The report required under subsection (a) shall contain—

(A) a detailed statement of the findings and conclusions of the Council with respect to such study;

(B) the Council's recommendations for such legislation as it considers necessary or appropriate in order to establish such program in the manner proposed by the Council; and

(C) the estimated cost of establishing and conducting the program in the manner proposed by the Council.

(3) AGENCY APPROVAL.—In addition to the information described in paragraph (2), the report required under paragraph (1) shall indicate whether or not each Federal depository institutions regulatory agency has approved the proposal of the Council contained in such report and, if any such agency has not, the reasons given by such agency for any failure to approve (to the extent the Council has such information).

SEC. 6. MINIMUM REQUIREMENTS FOR STATE EXAMINATIONS OF FEDERALLY REGULATED OR INSURED INSTITUTIONS.

(a) CONGRESSIONAL PURPOSE.—It is the purpose of this section—

(1) to establish a uniform procedure for reviewing, with the consent of the States, the adequacy of State examinations of depository institutions which are also subject to examinations by Federal depository institutions regulatory agencies; and

(2) to prohibit Federal depository institutions regulatory agencies from relying on any such State examinations in lieu of conducting their own examinations of such depository institutions if the State examinations are deemed inadequate pursuant to such review or the State refuses to allow such review to be made.

(b) ESTABLISHMENT OF MINIMUM REQUIREMENTS.—

(1) IN GENERAL.—In consultation with the liaison committee established by the Council pursuant to section 1007 of the Federal Depository Institutions Examination Council Act of 1978 (as redesignated by the amendment made by section 7(b)(1)), the Council shall establish minimum requirements for examinations of depository institutions by State depository institution supervisory agencies in order for any such examination

of any depository institution to deemed adequate for purposes of Federal law.

(2) CRITERIA FOR REVIEW.—In establishing the minimum requirements described in paragraph (1) for any State depository institution supervisory agency, the Council shall establish standards relating to—

(A) the frequency of examinations of depository institutions,

(B) the quality and thoroughness of such examinations,

(C) the standards and procedures for classifying loans and supervising lending practices,

(D) the ratio between the number of examiners employed by any State depository institution supervisory agency and the number of depository institutions examined by such examiners,

(E) the education, training, and experience of examiners, supervisors, and other individuals employed by such agency who are involved in conducting or supervising such examinations, and

(F) such other conditions and procedures as the Council may determine to be appropriate.

(c) REQUEST FOR PERMISSION TO REVIEW.—At least once during each calendar year, the Council shall request each State depository institution supervisory agency which conducts examinations of depository institutions within such State which are also subject to examinations by a Federal depository institutions regulatory agency to allow the Council to conduct a review, in accordance with subsection (d), of the administration of such examinations by such State agency.

(d) REVIEW.—

(1) IN GENERAL.—If, pursuant to a request under subsection (c), the Council receives permission to review the administration of examinations by a State depository institution supervisory agency, the Council shall determine whether such agency meets the minimum requirements established under subsection (b) in administering such examinations.

(2) PROCEDURES.—The Council shall prescribe by regulations the procedures for conducting any review under paragraph (1).

(e) NOTIFICATION OF FAILURE TO MEET MINIMUM REQUIREMENT.—

(1) IN GENERAL.—If, at any time, the Council determines a State depository institution supervisory agency does not meet the minimum requirements established under subsection (b), the Council shall notify the head of such agency of such determination. Such determination and notice shall not be made public by the Council.

(2) DETAILED EXPLANATION.—Any notice under this subsection shall be accompanied by a report containing a detailed explanation of the circumstances by reason of which the agency was found not to be in compliance with the requirements established under subsection (b).

(3) PERIOD FOR REMEDYING THE DEFICIENCY.—Upon making a determination described in paragraph (1), the Council shall prescribe, on the basis of all the circumstances of the case, the period of time it will provide to the agency to cure the deficiency giving rise to such determination before taking any action under subsection (f). The period so prescribed may be extended by the Council in its discretion, except that the period so prescribed in any case, including any such extensions, shall not exceed 3 years.

(f) NOTICE TO FEDERAL DEPOSITORY INSTITUTIONS REGULATORY AGENCIES.—If any State depository institution supervisory agency—

(1) refuses any request by the Council under subsection (c) for permission to review the administration of examinations by such agency, or

(2) fails to remedy any deficiency giving rise to a determination under subsection (e)(1) within the period of time allowed by the Council under subsection (e)(3),

the Council shall notify each Federal depository institutions regulatory agency of such refusal or failure to comply. If any examinations of depository institutions which are subject to examination by such agency are conducted by regional banks, branches, or other offices of such agency, the agency shall notify each such bank, branch, or other office of any notice received by such agency under the preceding sentence.

(g) SOLE RELIANCE ON STATE EXAMINATIONS PROHIBITED WHILE NOTICE IS IN EFFECT.—While any notice under subsection (f) with respect to any State depository institution supervisory agency is in effect, no Federal depository institutions regulatory agency and no regional bank, branch, or other office of any such agency may rely on any report of examination by such State agency in lieu of conducting examinations otherwise required under any Federal law or any regulation prescribed by such Federal agency.

(h) CERTIFICATION OF STATE EXAMINERS.—The Council shall establish a State examiner certification program. Under such program, the Council shall, at the request of any State depository institution supervisory agency—

(1) review the education, training, and experience of any individual referred to in subsection (b)(2)(E); and

(2) administer such tests of such individual as the Council considers appropriate,

to determine whether such individual is qualified to perform the functions of the position held by such individual with such agency. If the Council determines that such individual meets the minimum standards established under subsection (b)(2)(E) with respect to such position, the Council shall issue a certificate of qualification to such individual.

(i) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) The eighth paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 326) is amended by adding at the end thereof the following new sentence: "The directors shall not approve any examination by any State authority while any notice under section 6(f) of the Depository Institution Examination Improvement Act of 1985 is in effect with respect to such authority.".

(2) The second sentence of section 7(a)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)(2)(A)) is amended by inserting "(other than any such commission, board, or authority with respect to which a notice under section 6(f) of the Depository Institution Examination Improvement Act of 1985 is in effect)" after "authority" the first place such term appears in such sentence.

(3) The second to last sentence of section 8 of the Federal Home Loan Bank Act (12 U.S.C. 1428) is

amended by inserting "(and any State examination with respect to which a notice under section 6(f) of the Depository Institution Examination Improvement Act of 1985 is in effect shall be deemed inadequate)" after "Home Loan Banks".

(4) Subsection (d) of section 204 of the Federal Credit Union Act (12 U.S.C. 1784(d)) is amended by inserting "(other than any such commission, board, or authority with respect to which a notice under section 6(f) of the Depository Institution Examination Improvement Act of 1985 is in effect)" after "credit union".

SEC. 7. REDESIGNATION OF EXAMINATION COUNCIL AS DEPOSITORY INSTITUTIONS EXAMINATION COUNCIL.

(a) IN GENERAL.—The Financial Institutions Examination Council established by section 1004 of the Federal Financial Institutions Examination Council Act of 1978 is hereby redesignated as the "Depository Institutions Examination Council". Any reference in any law, regulation, document, record, or other paper of the United States to the Financial Institutions Examination Council shall be deemed to be a reference to the Depository Institutions Examination Council.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 1001 of Federal Financial Institutions Examination Council Act of 1978 is amended to read as follows:

"SEC. 1001. SHORT TITLE.

This title may be cited as the 'Federal Depository Institutions Examination Council Act of 1978'.".

(2) The Federal Depository Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) (as redesignated by paragraph (1)) is amended—

(A) by striking out "Financial Institutions" each place such term appears in such Act and inserting in lieu thereof "Depository Institutions", and

(B) by striking out "financial institutions" each place such term appears in such Act and inserting in lieu thereof "depository institutions".

(3) The heading of title X of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 is amended by striking out "FINANCIAL" and inserting in lieu thereof "DEPOSITORY".

(4) Paragraph (3) of section 1003 of the Federal Depository Institutions Examination Council Act of 1978 (as redesignated by paragraph (1)) is amended to read as follows:

"(3) the term 'depository institution' has the meaning given to such term by section 19(b)(1)(A) of the Federal Reserve Act.

(5) Sections 304(f) and 310(a) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(f) and 2809) are each amended by striking out "Financial Institutions" and inserting in lieu thereof "Depository Institutions".

(6) Subsection (e) of section 1112 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3412(e)) is amended by striking out "Financial Institutions" and inserting in lieu thereof "Depository Institutions".

(7) Sections 714(a) and 718(a) of title 31, United States Code, are each amended by striking out "Financial Institutions" and inserting in lieu thereof "Depository Institutions".

SEC. 8. DEFINITIONS.

For purposes of this Act—

(1) COUNCIL.—The term "Council" means the Depository Institutions Examination Council (as redesignated by section 7(a).

(2) FEDERAL DEPOSITORY INSTITUTIONS REGULATORY AGENCIES.—The term "Federal depository institutions regulatory agencies" has the meaning given to such term by section 1003(1) of the Federal Deposi-

tory Institutions Examination Council Act of 1978 (as redesignated by the amendment made by section 7(b)(1)), except that for purposes of sections 3 and 5 such term also includes the Federal Savings and Loan Insurance Corporation.

(3) DEPOSITORY INSTITUTION.—The term 'depository institution' has the meaning given to such term by section 19(b)(1)(A) of the Federal Reserve Act.

(4) INSTITUTION OF HIGHER EDUCATION.—The term "institution of higher education" has the meaning given to such term by section 1201(a) of the Higher Education Act of 1965.

(5) FEDERAL EXAMINER.—The term "Federal examiner" means any individual employed by a Federal depository institutions regulatory agency or a regional bank, branch, or other office of such agency whose duties involve the examination of depository institutions.

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Chairman St Germain. At this time I recognize Mr. Wylie, the ranking minority Member.

Mr. Wylie. Thank you, Mr. Chairman.

I want to welcome our panel of distinguished witnesses this morning, and I would like to commend our colleagues on their bill to improve the supervisory process. The bill includes a number of provisions ranging from a confirmation of the independent status of the Federal regulatory agencies to the consolidation of examiners' training programs. There is a lot in this bill. It may not be possible to get through it all this year, but I believe that at a minimum, this subcommittee and the full committee should take action to clarify the Federal bank regulators are not subject to Gramm-Rudman and the Anti-Deficiency Act.

I think we would be remiss if we did not question the wisdom of subjecting the Federal financial regulatory agencies, all of which operate with nontax, nonappropriated funds, to the same kind of deficit reduction as other Government programs which are funded at the direct expense of the taxpayers. I would observe there is no doubt that exceptionally conscientious supervision is required today. Since 1981, the FDIC has handled over 250 bank failures, and there are currently over 1,000 banks on the problem list and over 450 savings and loans that have a negative net worth on a GAAP accounting basis. So I think it is essential we have the proper supervisory action.

Mr. Chairman, I also would like to commend Mr. Lehman, the author of the second bill, the truth in savings bill, which is similar to language I had in a bill introduced earlier last year, H.R. 15.

Again, welcome to our witnesses, and I look forward to hearing their views on these very important bills before us this morning. Thank you.

Chairman St Germain. At this time, I recognize the cosponsors—principal cosponsors of the legislation, in order of seniority. We will recognize first Governor Lundine.

Mr. Lundine. Thank you.

Chairman St Germain. I am sorry, Congressman Lundine.

Mr. Lundine. Thank you, Mr. Chairman. I thank you for your courtesy of asking us to participate today, although we are not on this subcommittee.

I ask unanimous consent that my opening statement be made a part of the record. I will very briefly summarize.

We have felt and worked for some time to develop a legislative framework for improving the quality of supervision. That does not reflect ill on people who have been doing this difficult task up until now. It is simply a recognition that in the future, bound as we are by the stringencies of Federal austerity, we have got a big job to do, and the present framework may not be ideal to do it.

We listen to criticisms, private and public, from various organizations and various perspectives. We reintroduced a bill recently that we think accommodates many or most of those criticisms, and I look forward to a healthy dialog on this subject. Hopefully we can move legislation. I want to publicly acknowledge, although I have been recognized first, in the forefront of this effort has been my friend and colleague, Tom Carper, from Delaware.

[The opening statement of Congressman Lundine can be found in the appendix:]

Chairman **St Germain**. At this point, the Chair recognizes Mr. Carper of Delaware.

Mr. **Carper**. Thank you, Mr. Chairman.

I would like to thank you for scheduling this hearing on this legislation. I thank you for joining us as original cosponsor of the revised version of this bill.

I also thank Mr. Wylie for his participation and cosponsorship and the other 37 Members of this committee who have joined Mr. Lundine and me as original cosponsors in the revised version which I introduced yesterday. I simply want to thank you.

I welcome our witnesses today and would ask unanimous consent that a proposed statement be inserted into the record. I have some very brief comments I would like to offer. There are some in this country who believe that deregulation of financial institutions also means less rigorous supervision of banks and savings institutions. I do not agree with those people on that observation.

Last year, we are well aware, a record number of banks since the Great Depression failed in this country. We have significant numbers of banks and savings and loans that are on so-called trouble lists, and the situation, I think, remains serious and is likely to remain serious for some time. In this environment, America does not need fewer, less well-trained examiners and supervisors of financial institutions. If anything, we need, I think, more. I think we need better trained, better prepared supervisors in order that we can avoid a national crisis of confidence such as ones we had on a local basis in Maryland and Ohio.

We had hearings last year right here in this room to address questions of what do we do about the pressures being brought to bear on the insurance funds, the FSLIC and the FDIC. A number of recommendations were made by witnesses. Some people said we need risk-based premiums, while others said risk-based capital. Some contended we need to have public disclosure of ratings of public institutions; others suggested we simply require assets to market.

While no one agreed on those particular solutions, almost everyone agreed on one thing: to the extent we can reduce turnover among regulators, ensure better quality training, and hire better people in the first place, we as a nation, in particular in our financial institutions, would be better off.

Again, I thank the chairman, ranking minority Member, and say it has been a pleasure working with my colleague, Mr. Lundine, and the minority staff as well as the majority staff in crafting this legislation and to thank a number of people before us today for their assistance in improving the bill we originally introduced last year. Thank you, Mr. Chairman.

[The opening statement of Congressman Carper can be found in the appendix.]

Chairman **St Germain**. We will now put the statements of each and every member of the panel into the record in their entirety, without objection. I will go in the order they are listed here.

Our first witness will be the Honorable Manuel Johnson, Governor of the Federal Reserve Board.

STATEMENT OF HON. MANUEL H. JOHNSON, MEMBER, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Governor JOHNSON. Thank you, Mr. Chairman. I appreciate the opportunity to appear before the subcommittee today on behalf of the Federal Reserve Board to discuss H.R. 3567, the Depository Institutions Examination Improvement Act, and H.R. 2282, the Truth in Savings Act.

Regarding the Examination Improvement Act first, we are in agreement with the basic objectives of the proposed legislation and have taken steps to achieve many of them. We do have reservations concerning the arrangements the bill would establish to accomplish certain of the objectives, however, and I will discuss them as I proceed.

With respect to the major provisions of the bill that would exempt the supervisory agencies from Federal civil service laws and the Federal budgetary process, we would point out that the Federal Reserve is already exempt from these constraints under specific provisions of the Federal Reserve Act. Accordingly, the Board believes that the Federal Reserve should be excluded from this portion of the bill.

At the same time, the Board supports the legislation insofar as it applies to the other supervisory agencies. The legislation will provide them with the flexibility necessary to establish their own employee compensation programs and budgets and thereby enable them to maintain a qualified examination and supervisory staff.

The proposed legislation would also require the Examination Council to conduct regional studies of private sector pay scales and employee benefits for jobs comparable to those of Federal examiners.

Under the existing practice, the Federal Reserve banks, which employ substantially all of the System's examiners, set their salary levels commensurate with those being offered by banks and other financial institutions in their local areas. In determining what the local salary levels are, the Federal Reserve banks conduct surveys that are essentially the same as envisioned for the Council. The Federal Reserve would be prepared to share with the Council the information that the Reserve banks gather. Our survey experience, we would point out, is that, while the Federal pay scale is below going compensation levels in certain sections of the country, it is significantly above local levels in other sections.

As important as the issue of examiner compensation is, it cannot be considered without regard for the continuing need to control costs governmentwide and to achieve budgetary savings consistent with the Gramm-Rudman-Hollings legislation. Although the Federal Reserve System is not covered by Gramm-Rudman, Chairman Volcker has stated the Federal Reserve System's intention to comply voluntarily with the spirit of that legislation.

Despite this commitment to budgetary restraint, the Federal Reserve is increasing the number of its onsite examinations and hiring additional examiners to help conduct them. Because of these concerns with supervision, we support the bill's objective to provide the other supervisory agencies with adequate budgetary flexibility to meet increased requirements for bank supervision.

It is, of course, particularly difficult to strengthen our supervisory function at a time when our overall budget is being reduced. Of necessity, we have expanded the supervisory function by less than we had planned and, to meet the added expenses of the expansion that has been accomplished, have had to make cuts in other areas of our budget. Thus, if the Congress were to provide the other agencies with flexible compensation and budgetary authority, we would take guidance from this action in setting our own salary and budgetary policies.

With respect to consolidating all other examiner training in the Council, we believe that in addition to the present schools the Council conducts for all the agencies, serious consideration should be given to having the Council assume responsibility for conducting certain core courses for examiners. We would stop short, however, of having the Council assume all educational responsibilities for the agencies. Each agency has unique activities and responsibilities that require specialized training for its examiners—for example, in the area of bank holding company inspections and Edge Act corporation examinations, which apply to the Federal Reserve Board specifically. Thus, it is essential that the agencies retain the flexibility to offer their own courses to meet their special training needs.

The proposed legislation would also direct the Council to establish standards for judging the adequacy of State supervisory agencies and to conduct reviews of individual State supervisory departments to determine whether Federal agencies should rely on their examinations. It seems more appropriate to have the Federal supervisory agencies ultimately charged with the responsibility for ensuring the safety and soundness of State institutions assigned the requisite legal authority for certifying the States. Thus, the Board cannot quite support this portion of the proposed legislation because it does not establish the necessary interrelationship of authority and responsibility which we think is necessary.

In summary, we support the main thrust of the bill to provide, where needed, adequate compensation and budgetary flexibility—authority the Federal Reserve already has—to assure a continued high priority for adequate supervision of the Nation's depository institutions. We also see certain benefits to be gained from further coordinating the examiner training programs of the agencies. We do not, however, believe it is appropriate to vest in the Council responsibility for certifying the acceptability of a State's examination reports for use by the Federal supervisory agencies.

I would now like to direct the balance of my comments to the provisions of H.R. 2282.

H.R. 2282 would address deposit account advertising and disclosure by establishing uniform requirements applicable to all depository institutions. The bill calls for advertisements regarding interest rates to state an annual percentage yield and an annual rate of simple interest, as well as other factors. With respect to disclosures, depository institutions would be required to provide schedules of fees and charges for all existing accounts and prior to any changes in the schedules. Rule writing authority to implement these requirements for all institutions is given to the Board of Governors of the Federal Reserve System.

Since 1969, the Board has had comprehensive regulations on advertising in regulation Q. In January of this year, the Board proposed a series of amendments to update, clarify, and simplify its current advertising requirements. This proposal addresses many of the same advertising issues covered by H.R. 2282, such as requiring an annual percentage yield [APY] and a statement concerning service charges in advertisements. At the same time the Board directed its staff to explore the need for action on disclosure of detailed account information to bank customers. The Board also supports providing bank customers with clear and complete information when they open their accounts and is planning a policy statement encouraging disclosures by member banks.

In considering this policy statement, the Board has taken into account that the level of information provided to bank customers has been high. Over the past 2 years, only approximately 4 percent of the total complaints received by the Board on member banks pertained to advertising and disclosure issues similar to these contained in the bill.

Moreover, a January 1986 survey of consumer attitudes conducted for the Board by the University of Michigan indicated that 94 percent of current deposit account owners felt that they had received the information that they needed to know about the terms and conditions of their accounts; 82 percent of the families who opened a checking account and 73 percent of those opening a savings account in the past 2 years reported they had received a written explanation of the terms and conditions of their new account. Although the survey did not provide information on the nature of the disclosures made in written form, it did indicate that a significant majority of consumers are receiving what they believe to be adequate disclosures on their accounts in written or oral form.

While H.R. 2282 would have the advantage of extending uniform advertising and disclosure requirements to all depository institutions, including member and nonmember banks, thrift institutions, and credit unions, it may unduly limit flexibility. In particular, by attempting to establish uniform requirements applicable to all accounts, H.R. 2282 does not allow sufficient latitude to tailor advertising and disclosure requirements to individual account characteristics and individual customers' use of accounts.

Other provisions of H.R. 2282 may also hamper regulatory flexibility in establishing clear and simple advertising requirements. It may be unnecessary to require advertisements containing annual percentage yields to refer to the method of compounding or to require advertisements to state the method of paying interest. Similarly, the statement concerning account charges required by H.R. 2282 refers to elements characteristic of transaction accounts, such as transaction fees, and elements of time deposits, such as early withdrawal penalties, and might be simplified to avoid confusing bank customers as to the charges applicable to their account.

With respect to disclosures, H.R. 2282 could be read to require depository institutions to provide customers with schedules of fees and charges applicable to all accounts and services and a description of all charges in the previous schedules when account terms are changed, even though such schedules may not be applicable to the customer's account. In order to avoid confusion, disclosure requirements should be limited to changes in information relevant to a customer's deposit relationship with the institution.

Allow me, at this point, to reiterate our basic position. The Board supports clear advertising and full disclosure by depository institutions and has proposed for comment amendments to update and clarify its advertising rules and is working toward a policy statement that will address disclosures by member banks. As both of these efforts would be limited to member banks, the Board is consulting with the other regulatory agencies in an effort to obtain a uniform application of these concepts to all depository institutions.

While we are not seeking legislation, if Congress believes that legislation is necessary to achieve uniformity among the agencies, the Board believes that the legislation should provide a more flexible statutory mandate. This would permit the Board to structure rules that would enhance customer benefits as new types of deposits evolve while minimizing customer confusion and the burden on depository institutions.

Thank you, Mr. Chairman.

[The prepared statement of Governor Johnson with attached responses to Chairman St Germain's letter of May 27, 1986, can be found in the appendix.]

Chairman **St Germain**. Thank you, Governor Johnson. We will now hear from Mr. Seidman, Chairman of the Federal Deposit Insurance Corporation.

STATEMENT OF HON. L. WILLIAM SEIDMAN, CHAIRMAN, FEDERAL DEPOSIT INSURANCE CORPORATION [FDIC]

Mr. **Seidman**. Thank you, Mr. Chairman, members of the committee. We appreciate your holding prompt hearings on these important proposals. I will direct my remarks first to the Carper-Lundine bill. We appreciate also the support expressed by the many cosponsors of the bill and the extensive work that went into the current proposal. We strongly support this legislative initiative.

First let me deal with the personnel provisions of the bill. These would give us real flexibility to hire employees, set benefits, and establish our own retirement system on a competitive basis. We welcome these extremely helpful provisions and believe they will give us tools to continue to improve our supervisory efforts. The legislation will also clarify the status of our employees above which there has always been some doubt.

The bill proposes that in establishing our new retirement system, we transfer accrued employee and employer contributions into the new system. We approve of this proposal, but we believe the bill should also ensure that existing employees' benefits are fully protected and that our employees can be given the option to elect which system to join. This has normally been done when agencies, such as the Federal National Mortgage Association, are transferred out of the Federal System.

In the short time we have had to examine this latest draft, it has not been possible to fully research the retirement area. We will continue our study and will be happy to work with the committee in developing any required perfecting amendments.

Section 3 of the bill deals with Gramm-Rudman-Hollings and the antideficiency provisions. The bill would exempt the FDIC and other Federal banking agencies from budget reductions under Gramm-Rudman-Hollings and apportionment under the Antideficiency Act. We strongly support these provisions. It would reaffirm the FDIC's historic bipartisan independent status and ensure that our agency remains subject to control by the Congress.

We have long operated at a substantial annual surplus under our independent status, and this is a desirable result, not always achieved in government. No one has shown the need for change. With record numbers of banks failing and on the problem list, this is no time to see just fundamental changes in the operation of the bank regulators.

On several previous occasions, OMB has attempted to assert control over our budget but has been repeatedly rebuffed by the Congress. Now OMB is raising for the first time the novel claim that a 36-year-old law, the 1950 Antideficiency Act, authorizes it to apportion our budget. We are convinced this claim is without legal merit. Nevertheless, if OMB is allowed to go forward, we and the Congress will lose the direct control of our budget. Control of budget detail permits policy control, and this is the goal of OMB. But apportionment requirements could prevent us from responding swiftly and flexibly to banking sector problems as they arose.

OMB and the GAO also claim that Gramm-Rudman-Hollings is applicable to the administrative expenses of the FDIC. This conclusion ignores the fact that the insurance assessments from insured banks and investment income are the FDIC's exclusive sources of funds and that any reduction in our expenditures will have no real effect on Federal expenditure levels. Sixty percent or more of any savings must be rebated to the banks as a reduction of insurance premiums, and the rest is placed in a trust to meet insurance obligations.

OMB's conclusions also ignore legislative history. Senator Packwood, chairman of the Senate Finance Committee and head of the Gramm-Rudman-Hollings Senate conferees, stated, "We exempt numerous other programs on which there was no argument, such as the Federal Deposit Insurance Corporation." We have been asked to testify before the House Banking Committee Subcommittee on General Oversight and Investigations on the potential impact on our operations of future Gramm-Rudman reductions.

Our testimony will explain in detail how implementation of these reductions will severely impact our supervisory efforts, substantially raise our liquidation costs, and could shake the stability of the financial system we supervise. These changes would result in undermining our statutory responsibility to promote the safety and soundness of the banking system. Absent relief from the rigid requirements of Gramm-Rudman, the FDIC would be unable to fulfill its statutory mission of supervising insured banks on an adequate basis, and we will provide details to the committee.

Section 4 of the bill would establish a congressional policy for the consolidation of Federal examiner training. The Depository Institutions Examination Council would develop a proposal to implement this policy. We understand the objective of consolidated training, and we would only note that at present a large part of such training is done on a consolidated basis through the Council.

We would only add that each regulatory will continue to need some flexibility in structuring its training programs because of the diverse nature of the institutions we supervise. We are eager to improve our cooperative effort and work on a plan to reduce cost and enhance quality of training.

In that regard, we have suggested a new joint training center as a possible means of increasing effectiveness and efficiency.

Section 5 deals with graduate programs. We support the provision for a study of graduate programs in financial analysis for the agencies.

Section 6 deals with minimum requirements for State examinations. The improvement in the quality of State examiners and their respective departments is a policy which the FDIC has always supported. In fact, we play an important role in this area by making available our training facilities to State examination personnel and offering other support services, such as access to the FDIC's data base. We support the thrust of section 6, but we have some thoughts about how to integrate it for the present operations.

The FDIC has some form of divided examination program with some 32 State banking departments wherein we alternate exams of satisfactory institutions. The agreement takes into consideration the differences among State departments and provides a great deal of flexibility for either agency to examine independently any institution it desires. This does involve some judgments about the quality of the State examinations, but these judgments are made on a case-by-case basis.

Having a Federal entity make formal judgments in this area could strain the good cooperative relationship enjoyed by Federal and State regulators unless the States, themselves, approve of the provision. We must protect against any harm to the present system while furthering minimum requirements for State examinations.

Mr. Chairman, I will now address H.R. 2282, the Truth in Savings Act. The public is currently faced with a plethora of advertised interest rates and annual yields that are often difficult to understand. They come not just from depository institutions, but from security firms and other intermediaries not addressed by this bill. Deregulation of interest rates has been a great boon to consumers, but it has brought some confusion. We believe strongly in "truth in savings."

The question is whether truth-in-savings legislation is needed or whether initiatives already underway will provide needed information to the consumer. Our doubts about the need to legislate at this time are as follows: First, regulators have the authority to issue regulations regarding advertising rates, and as you heard from Governor Johnson, are currently working on uniform regulations to govern their advertising.

Second, the industry itself has recognized a problem and under the auspices of the American Bankers Association is engaged in a voluntary compliance program.

Three, by spotlighting misleading advertisements, consumer groups, depository institutions, and the media have been able to counteract many deceptive interest rate claims.

Fourth, the procedures set forth in this bill are very similar to those in the Truth in Lending Act. That act has imposed significant costs on the industry which, in turn, have been passed on to the consumer. Before exposing industry, and thus the consumer, to additional costs of this nature, we would like to see if existing problems can't be effectively dealt with through regulations and voluntary action.

In conclusion, we believe the Carper-Lundine bill is a major step in the right direction for bank regulation, and we support it. We believe truth in savings is necessary, but it may be premature to legislate in this area.

That concludes my testimony, Mr. Chairman. Thank you.

[The prepared statement of Chairman Seidman with an attached legal memorandum to John H. Carley, General Counsel, Office of Management and Budget from Justice Department Deputy Assistant Attorney General Samuel A. Alito can be found in the appendix.]

Chairman **St Germain**. Next we will hear from the Comptroller of the Currency, Mr. Clarke.

STATEMENT OF HON. ROBERT L. CLARKE, COMPTROLLER OF THE CURRENCY

Mr. **Clarke**. Thank you.

Mr. Chairman and members of the subcommittee, I thank you for this opportunity to appear before you to discuss two subjects: First, proposed legislation concerning bank advertising and disclosure practices intended to improve consumer information; and, second, resource constraints facing the Office of the Comptroller of the Currency. I will limit my remarks this morning as I have submitted a more complete statement for the record. Also, I would like to add that if by the end of this hearing I have not answered the specific questions in your letter of invitation, I will be happy to submit answers for the record.

H.R. 2282, the truth in savings bill, attempts to achieve uniform disclosure of the interest rates and fees associated with interest-bearing deposit accounts offered by depository institutions so that consumers can make more meaningful comparisons among such accounts. The OCC fully supports this goal. We believe, however, that current Federal banking agency regulatory initiatives in this area may make truth in savings legislation unnecessary.

The OCC currently has no express rulemaking authority regarding advertising of deposit accounts by national banks. However, the Federal Reserve Board prescribes rules governing the advertising of interest-bearing deposits by member banks, including national banks, through its authority under the Federal Reserve Act. The OCC activity enforces national bank compliance with the Federal Reserve Board's implementing rule, regulation Q. This regulation currently requires that deposit advertising be accurate and not misleading, and that several identified features of accounts be specifically disclosed.

The OCC issued banking bulletins to national banks on several occasions in recent years emphasizing the importance of complying with the disclosure requirements of regulation Q. In these bulletins, we expressed our concern that national bank advertising for new ceilingless accounts not be inaccurate or misleading and emphasized the importance of national banks disclosing current schedules of fees and charges.

Additionally, in a 1985 banking circular that encouraged national banks to consider the provision of basic banking services, the OCC also recommended that national banks provide plain-English, written disclosure of all fees, services, and terms of the basic banking services.

The OCC has also taken the initiative to increase the required disclosure of fees and service charges by proposing an amendment to our disclosure regulations. This proposed change, which is currently under consideration by this Office, would require national banks to disclose to depositors, among other things, current schedules of fees and charges and their funds availability policies.

Because of the constantly changing nature of the financial products offered to consumers, we believe that it is important that the regulatory agencies have maximum flexibility to adjust disclosure requirements in response to new industry practices. Rigid statutory requirements, based on today's products, may not serve the consumer when applied to the products of tomorrow. We would, therefore, be very concerned with any statute that mandates specific language and formats for the advertising of deposit accounts or that specifies how products should be designed.

The Federal Reserve Board is currently considering revisions to its regulation Q. The OCC has commented on this proposal and is participating in an interagency working group organized to scrutinize Federal advertising and disclosure policy on bank and thrift deposit accounts.

In conclusion, the objective of H.R. 2282 is commendable. It is our view, however, that Federal bank regulators already possess adequate authority to achieve increased and uniform disclosure in the advertising of interest-bearing deposit accounts and are actively working toward that goal. In fact, Federal legislation could be harmful to the extent that it imposes specific disclosure requirements that may prove, over the long term, to be inappropriate, excessively rigid, or overly costly

Chairman St Germain. That all sounds very good, but, you know, there has been a lot of very misleading advertising, and there has been and is a great deal of misleading advertising going on. And to say that you addressed this problem is, I think, also misleading.

Right now all of us who have to run for reelection every 2 years are sitting down with our public relations firms, and then we pay big bucks, unfortunately, to sell the product. But that is nothing compared to what financial institutions pay these firms to come up with these great gimmicks to delude the depositor or the potential depositor. And we will show an example of it during the questioning period.

But the fact of the matter is you haven't done very much, and I don't mean you as an individual, but the offices represented here to date, to really and truly tighten the screws here so that advertising is clear to the customer.

Pardon me for interrupting, but, they are competing not on rates but how to present the product so that the customer really doesn't know what he or she is getting, but they think they are getting something great.

Mr. **Clarke**. Mr. Chairman, you make a good point. I don't think any of the three of us who have presented statements so far is saying that we have a perfect situation. That is why the Federal Reserve Board is considering revisions to regulation Q, to see if we can't eliminate some of the problems you have just mentioned. Our only point is we think we can do that administratively without the need for legislation.

I would like to devote the remainder of my statement, as the subcommittee requested, to the OCC's need for additional resources. Our responsibilities continue to grow as conditions in the banking system change. However, it is becoming increasingly difficult for us to meet those responsibilities. One reason for this is the spending restrictions imposed by the Balanced Budget and Emergency Deficit Control Act of 1985, better known as Gramm-Rudman-Hollings. Another reason is our inability to offer compensation and career development packages that can attract and retain an adequate number of experienced and competent bank examiners.

Today, rather than discuss the specifics of the proposed legislation, I will present my overall view on the need for the OCC to enhance its supervisory efforts, to retain the flexibility to direct its supervisory efforts to areas of greatest need, and to build up its highly skilled work force.

The responsibilities and challenges facing bank supervisors have increased steadily in recent years due to a variety of factors. First, the number of national banks has increased from 4,400 in 1980 to nearly 5,000 at the end of 1985. Second, since the 1960's, the financial services sector has undergone tremendous change that has made the banking business more complex and difficult. Third, volatile economic conditions have buffeted the banking system.

Last year, 118 commercial banks failed, the most in any year since the Great Depression; 30 of the 118 were national banks. At least that many failures are expected in 1986. Through May 30 of this year, 50 commercial banks had failed, of which 21 were national banks.

The pressures on the industry are even more apparent from the number of banks experiencing financial difficulty. In 1980, 257 national banks were receiving special supervisory attention—that is, had CAMEL ratings of 3, 4, or 5. Since then, the number of national banks requiring special supervisory attention has increased fourfold to over 1,100 banks.

The increased number of national banks, the more complex nature of the business of banking, and the financial difficulties being experienced by national banks have significantly increased the demands on the OCC at a time when our resources have unfortunately declined. Since 1980, the number of full-time equivalent employees at the OCC has declined 10 percent to 2,900. As a result, the OCC has been forced to cut back on the number of annual onsite bank examinations.

To meet these greater supervisory demands with a smaller examining force, the OCC has had to increase its reliance on remote surveillance of bank performance through greater use of computer technology and offsite analysis. The OCC has also had to limit its resource-intensive, onsite examinations to those banks that present the greatest risks to the safety and soundness of the entire banking system. As part of our 1986 supervisory plan, for instance, we decided to forgo onsite examinations at 1,200 community national banks that had been identified through offsite analysis as posing the least risk to the banking system.

Despite our best efforts to supervise——

Chairman ST GERMAIN. Excuse me, Mr. Comptroller. How many did you say, 1,200?

Mr. CLARKE. 1,200.

Chairman ST GERMAIN. Let me ask you this. Would offsite analysis by computer—is that what you said? You are substituting offsite analysis by computer?

Mr. CLARKE. For those particular banks; yes, sir. And if as a result of that offsite analysis one of them pops up as being a potential problem, we would conduct an onsite examination.

Chairman ST GERMAIN. Did Penn Square pop up on that one?

Mr. CLARKE. Penn Square would have definitely popped up.

Chairman ST GERMAIN. How about money laundering?

Mr. CLARKE. That is not something that will pop up in our offsite analysis.

Chairman ST GERMAIN. Money launderers can now be thankful to OMB's ruling because drug trafficking can go on in utter abandon. They can have the time of their lives because there is no problem laundering their money. Is that correct?

Mr. CLARKE. That may overstate it just a little bit.

Chairman ST GERMAIN. Well, the fact of the matter is they have been laundering before when you had sufficient people. Is that not correct?

Mr. CLARKE. That is correct.

Chairman ST GERMAIN. This is going to make it a whole lot easier for drug traffickers to launder their money?

Mr. CLARKE. It simply means we will not be able to monitor compliance by those banks with the Bank Secrecy Act.

Chairman ST GERMAIN. As the Chairman of the FDIC, do you agree with that?

Mr. SEIDMAN. Yes.

Chairman ST GERMAIN. The money launderers should write a thank you note to the Director of OMB. What is his name, Miller?

Mr. SEIDMAN. I believe that is his name.

Mr. BARNARD. James Miller.

Chairman ST GERMAIN. He should be getting a lot of thank you notes, flowers, and chocolates I am sure. Wonderful.

Sorry for interrupting you. It just popped into my mind that that wouldn't pop out on the computer on sight analysis.

Mr. CLARKE. Despite our best efforts to supervise the national banking system with fewer examiners, the pressure for a larger examination staff continues to mount. The Treasury Department recognizes the need for additional personnel and has requested 150 additional full-time equivalent employees for the OCC in fiscal year 1987.

The application of Gramm-Rudman-Hollings to the OCC however, has hindered our plan to expand the ranks of our examiners and has, in fact, resulted in a decline in the size of our examination force. To reduce expenditures in fiscal year 1986 as mandated by Gramm-Rudman-Hollings, the Office first reduced non-personnel-related expenditures. But those cuts enables us to achieve only approximately 60 percent of the mandated reductions.

To make up the difference, the OCC has been forced to implement a hiring freeze. As a result of the freeze, the number of field examiners is likely to decline by approximately 275 during fiscal year 1986. This constitutes 12 percent of our field examining force. In Washington, the freeze is expected to result in a reduction of 73 employees, or about 11 percent of headquarters staff by yearend. These reductions come on top of the 10-percent decline in staff size that we have experienced since 1980.

As a result of the hiring freeze and budget cuts, approximately 700 community national banks, or 14 percent of the national banking system, may not receive planned onsite supervision in 1986. Of these 700, over 100 had been identified as institutions likely to suffer a financial deterioration. These reductions are in addition to the previously planned elimination of onsite visits at over 1,200 community banks.

As you know, Mr. Chairman, the OCC is funded entirely by assessments and fees paid by national banks. We receive no government funds or appropriations. Recognizing the importance of insuring that the OCC fulfill its supervisory mission, we would be pleased if the Congress reevaluated the applicability of the automatic reductions of Gramm-Rudman-Hollings to the bank regulatory agencies for fiscal year 1987 and beyond.

An additional longer term problem is posed by the high rate of examiner turnover at the OCC. Over the past 5 years we have had an average annual turnover rate which has averaged about 14 percent. This turnover rate has reduced the number of our experienced examiners and has required that an increasing share of our annual expenditures be devoted to training programs.

The OCC's turnover rate is particularly costly because of the investment we make in our examination staff. Virtually all of our supervisory talent is homegrown. We hire new college graduates and following approximately 5 years of both formal and on-the-job training costing us more than $30,000 per employee in addition to compensation, qualified employees are commissioned as national bank examiners. Once trained, our examiners have skills that are attractive to banks and to supervisors of other financial institutions.

When one of these examiners leaves the agency, it is difficult to find a comparably skilled replacement. For most supervisory positions, people with the necessary skills are not readily available outside of the OCC. OCC recruitment efforts are also hampered because the earnings potential of trainees may be as much as 10 to 30 percent lower at the OCC than at other Federal regulatory agencies that oversee financial institutions. Greater flexibility in our compensation program would go far toward reducing examiner turnover and would enhance the attractiveness of a professional career with the OCC.

The Gramm-Rudman-Hollings reductions for fiscal year 1986 currently hinder our efforts to achieve fully our supervisory mandate at a time when the banking system is subject to significant pressures. Although the 1986 cuts are manageable, future cuts, if required, will severely impair our ability to supervise national banks. Accordingly, the administration favors the Congress reconsidering the applicability of Gramm-Rudman-Hollings for 1987 and beyond.

Bank supervision is a major public policy concern. I believe that the Congress—and the public—want to see an effective system of bank supervision and regulation. But to quote a well-known slogan, "you get what you pay for." And it is significant that the banks are paying for it.

I have had numerous bankers tell me that they would be willing to pay more in assessments if it would mean that their banks would be examined more frequently and by examiners with more experience. I believe that more flexibility in our compensation and career development program would enable us to retain more experienced staff.

Funding is not the problem. The OCC is a self-supporting agency funded entirely by user-fees. To carry out its mission, the OCC must be able to spend, from its own funds, the amounts necessary to respond to changing conditions in the banking industry. We should not be subject to arbitrary, across-the-board cuts in spending levels.

I will be happy to answer any questions the subcommittee may have, Mr. Chairman.

[The prepared statement of Comptroller Clarke can be found in the appendix.]

Chairman **St Germain**. I would suggest maybe you would like to talk to your colleagues and maybe you could get an appointment. Just think, maybe even Paul Volcker may want to attend because I don't think he is in favor of drug trafficking and money laundering in banks and financial institutions. Get an appointment with Nancy Reagan. She is going around the country, and she is truly and sincerely very upset about what drugs are doing to the youth of this country. So maybe she could then whisper into the ear of her husband, the President, who could then whisper into the ear of James Miller at OMB and Phil Gramm and Rudman, those people, and say, hey, do you people know what you are doing on behalf of the drug trafficking in the United States of America?

You might want to consider that. That might help us solve the problem.

We will hear from the Chairman of the Home Loan Bank Board, who is also at this point in time chairing the Examinations Council, as we made a note of in our opening remarks.

Chairman Gray.

STATEMENT OF HON. EDWIN J. GRAY, CHAIRMAN, FEDERAL HOME LOAN BANK BOARD [FHLBB]

Mr. **Gray**. Thank you very much, Mr. Chairman.

We appreciate the opportunity to appear before you once again to discuss the legislative proposals and related matters on the agenda for this hearing. With this in mind, it is fitting to point to the Bank Board's longstanding mission, reaffirmed by 26 successive Congresses, to supervise for safety and soundness publicly chartered, federally insured thrift institutions whose purpose is to serve the needs of families and individuals.

The Congress has fashioned through the years a body of law the intent of which we who serve on the Board have sworn to uphold. Pursuant to this responsibility, we have established regulatory policies to carry out the statutory imperatives of the Congress, including those relating to consumer disclosure. We have tried to do a good job in this regard.

We continue to work very closely with our fellow financial institution regulators in the effort to develop a common approach to assure disclosure of conditions for savings instruments.

With the development of congressionally directed assets and deposit deregulation for thrifts in recent years, depository institutions of all types have innovated, and continue to innovate, a variety of savings and lending products for their customers. In my opinion, the regulatory process which the Congress has authorized is characterized by considerable flexibility and is, therefore, well suited to deal with such changes in reflecting the will of the Congress and the President who enact our laws. I have outlined the Bank Board's views on matters before the committee in the statement sent to you yesterday.

Because one of the proposals before us relates to the supervision of insured financial institutions, I would like to take the last several minutes of this brief statement to outline the progress we at the Bank Board have made during the past 11 months to improve our field examination capability. Faced with the need for a very substantial decrease in our examination force, the Bank Board last July took the historic step of transferring our entire field examination team to the 12 Federal Home Loan Bank Board districts under the direct authority of our Principal Supervisory Agents. We did this pursuant to authority granted in the Garn-St Germain Act.

If I may say so, Mr. Chairman, Chairman Barnard of the Subcommittee on Commerce, Consumer and Monetary Affairs in its study of the Empire-Mequite failure recommended we do precisely what we did and we thank him very much for it, and the Government Operations Committee, for their encouragement. We also thank you for your support along the way.

Previous to that transfer, we had been severely limited in our ability to expand the examination force by budget, personnel, and salary classification constraints. At the time of the transfer, on July 7, 1985, we had a total of 750 field examiners earning an average annual salary of $25,000 a year, who were called upon to monitor the condition and operations of a thrift industry whose health left a good deal to be desired and whose assets had grown past the $1 trillion mark.

We had repeatedly requested, and been denied, the opportunity to increase these field forces which must serve as the first line of defense for FSLIC. The turnover rate we were experiencing was frankly, staggering. In some areas of the country, turnover had reached 28 percent a year and only half of our examiners had been on the job 2 years or more. Entry level salaries for examiners were at $14,000 a year. Yet, these same examiners were expected to examine the most sophisticated financial transactions in the history of finance.

Our action to transfer the field examination force was taken in order to deal with this frankly impossible situation. Shortly after the transfer, the Bank Board increased the minimum entry level salary for examiners by a third, to $21,000 a year. As you know, not a penny of taxpayer's money is used to support the Bank Board, the FSLIC, or the Federal home loan banks. Every penny comes from the thrift industry. Our entire system is fully supported by the member savings institutions in the system.

As a result of the transfer of our field examiners, we increased the examination force to 1,000 by December 31, from 750 at midyear 1985. We now have nearly 1,250 examiners on the payroll, and that will increase to more than 1,500 by the end of this year. This will represent a 100-percent increase in just a year and a half.

Moreover, our turnover rate in the field examination force has slowed dramatically. Not only have we been able to increase the number of examiners as a result of the transfer, but we also have been able to attract even better people than before. And, because of the flexibility we now have, we will be able to retain far more of them well out into the future.

Before the transfer—it wasn't long after we had completed the training of our examiners that many were lured away to jobs in the private sector. That was sure to happen in far too many cases, given the very low entry level salaries and the generally low level salaries that we were able to pay during the early years of a field examiner's career.

Now, as opposed to then, we do have the flexibility to greatly improve the prospects that the investment we make in training an examiner will pay off in the form of far longer service.

We have made great progress. Our field examiners now work closely with our supervisory agents, and the supervisory staffs in the Federal home loan bank districts. Coordination between the examination and supervisory functions has undergone enormous improvement. Two years ago, we established a major training center in Dallas for supervisors and examiners throughout the Federal home bank system. It is headed by Dr. Eugene Byrne, formerly dean of the business school at Southern Methodist University. The center is fully funded by the 12 Federal home loan banks, under the tutelage of the Principal Supervisory Agents and their people in the field, and under the continuing careful oversight of the Federal Home Loan Bank Board.

As you know, the Principal Supervisory Agents in the 12 Federal home loan bank districts report directly to the Bank Board in Washington. Examiners and Supervisory Agents in the field are improving their capabilities with each passing day, as we continue to work toward our goal of making our own system the very best in the Federal financial system supervisory apparatus.

I am extremely proud of the great strides that we are making as a result of the flexibility that our system provides us in adapting to local conditions in carrying out the overall oversight function. Again, this function is literally the first line of defense for the FSLIC. No longer is our examination and supervision apparatus a weak sister in the Federal chain. The historic action we took last

July is the main reason. And our continued success in this regard depends, I believe, on the ongoing flexibility that we now have.

Thank you very much. I will be happy to answer questions.

Thank you.

[The prepared statement of Chairman Gray with attached appendixes can be found in the appendix.]

Chairman **St Germain**. Now we will hear from Senator Jepsen, who is Chairman of the National Credit Union Administration. In my book, once a Senator always a Senator.

STATEMENT OF HON. ROGER W. JEPSEN, CHAIRMAN, NATIONAL CREDIT UNION ADMINISTRATION [NCUA]

Mr. **Jepsen**. Thank you, Mr. Chairman.

I worked many years, as you know, with Congressman Reuss, and I see that he is still up there keeping his eye on me.

I thank you for affording the National Credit Union Administration the opportunity to testify on two significant measures pending before your subcommittee, the Depository Institutions Examinations Improvement Act of 1986, sponsored by Congressmen Carper and Lundine, and the Truth in Savings Act, sponsored by Congressman Lehman. The National Credit Union Administration supports both of these bills.

The Depository Institutions Examination Improvement Act would be of significant assistance in enabling NCUA to fulfill its mission of safeguarding the country's federally insured credit unions. By freeing our agency from constraints now imposed by OPM, OMB, and the Gramm-Rudman-Hollings Act, this legislation would permit NCUA to provide quality supervision of credit unions in this time of substantial deregulation. In our case, very rapid growth and an increase in sophisticated technology in the service and administration area.

Mr. Chairman, in order to better understand the need for the Carper-Lundine bill, I would like to describe our present responsibilities and funding.

The National Credit Union Administration charters, supervises, and insures 10,100 Federal credit unions. In addition, the agency insures member accounts at another 4,969 State-chartered credit unions. We receive no appropriations of tax money from the Congress for any of our activities. Rather, NCUA is funded exclusively by credit unions and by earnings on investments.

NCUA's funding is segregated into three separate accounts or funds. These are the operating fund, the National Credit Union Administration share insurance fund, and the central liquidity facility.

The operating fund is used for the payment of agency expenses such as payroll, travel, and administrative costs. Revenue is derived from an annual operating fee assessment paid by all federally chartered credit unions and from expense reimbursements by the share insurance fund and the central liquidity facility.

The share insurance fund pays liquidation costs and financial costs, such as the expenses associated with mergers, directly and reimburses the operating fund for its share of the agency's operating expenses. Revenue is currently derived entirely from the interest earned on credit union contributed capitalization deposits.

The CLF is supported by earnings on investments and interest on loans to credit unions.

Once again, Mr. Chairman, none of these accounts receives tax revenues from the Treasury.

At NCUA, we believe less regulation in Washington ought to be accompanied by more supervision in the field. However, given the present constraints on hiring and promoting our examiner force, it is increasingly difficult for NCUA to fulfill its statutory mission of promoting and protecting credit union safety and soundness.

Mr. Chairman, as I am deviating somewhat from the remarks, I would ask respectfully for unanimous consent to have my formal remarks entered in the record as if read, and I will try to be more brief.

Chairman **St Germain**. That has already been done.

Mr. **Jepsen**. I thank you.

In 1965, Mr. Chairman, the agency had approximately 300 examiners. Today we have 347—a 16-percent increase. During this same period, we have seen a 1,686-percent increase in the size of the average Federal credit union, from $431,000 to $7.7 million.

I respectfully point out, Mr. Chairman, that our sister thrifts—and I am happy for them—have approximately one examiner for every three units examined. At NCUA, we have currently, if referring to federally chartered credit unions, one examiner for every 33 units. If we include the responsibilities that we have for the safety and soundness of our State-chartered credit unions, and we do have some good assistance from the States, we would have one examiner for every 45 units.

NCUA's field examiner turnover rate for the 4-year period from 1982 through 1985 averaged 16.5 percent annually. During this period, out of an average examiner work force, including supervisory examiners, of 357 positions, there were a total of 236 separations, or 59 annually, from the agency. This condition creates a number of adverse results, including the devotion of a disproportionate amount of the agency's human and financial resources.

We believe these problems are, in large part, attributable to constraints imposed on the agency pursuant to Federal personnel laws in the areas of hiring, classification, and pay. Our most experienced examiners often leave the agency for much more lucrative positions in the private sector.

We have been pursuing limited administrative exceptions which might grant us partial relief from some personnel restraints. We have been working hard at this, and I would point out that both Director Miller from the OMB and Director Horner from the OPM and their staffs, have been most cooperative. I would also add that in most situations, both have been perceptive in their attempt to help us. I do appreciate their concern and their efforts. However, these limited exemptions are still extremely difficult and cumbersome to obtain and we would prefer the more comprehensive approach of Carper-Lundine.

We do have misgivings, Mr. Chairman, about the authority accorded to the Federal Financial Institutions Examination Council by the legislation. NCUA's experience has been that the Council, almost by necessity, is primarily oriented to banks and banking problems. We are pleased that the latest revision of Carper-Lundine does provide more of an advisory role for the Council, but we remain troubled by section 6.

We believe serious questions of States rights and dual chartering are raised by section 6, which would establish minimum standards for State examinations of federally insured institutions, including credit unions.

Carper-Lundine also would exempt NCUA from a sequestration order under Gramm-Rudman-Hollings. We support this provision because we are seriously concerned by the potential adverse impact of this statute on credit union safety and soundness.

Next year, when we will be fully staffed to our budget allocation, the impact on NCUA could be severely damaging. Credit union examiners and examiner-support positions account for over 80 percent of our staffing. As a result, any significant reductions, such as a potential Gramm-Rudman-Hollings' sequestration of 15 percent, will have an immediate adverse effect on our ability to examine credit unions. The phrase "immediate adverse words" were in my prepared statement. I would add that they would be traumatic and tragic.

We have estimated that if a 15-percent reduction in the fiscal year 1987 budget were accomplished through furloughs, approximately 35 percent of Federal credit unions would not be examined in fiscal year 1987. In addition, our current initiatives to improve the quality of our examination program, principally through greatly increased training and educational programs, would have to be completely abandoned.

All federally chartered credit unions are currently examined annually, a vital element in our efforts to maintain safety and soundness. Large-scale employee furloughs would necessarily result in the immediate severe lengthening of the examination cycle.

Our experience with lengthening the examination cycle beyond 1 year has shown that the entire examination system soon begins to deteriorate.

The laudable purpose of the Gramm-Rudman-Hollings Act is to reduce our national deficit. Here, I would again point out, for the record, Mr. Chairman, that I fail to recognize what relationship we have to the Gramm-Rudman-Hollings Act. Reducing NCUA's expenditures will not reduce the national deficit. Therefore, it is illogical and unreasonable for the Gramm-Rudman-Hollings Act to apply to the National Credit Union Administration.

In summary, economic change, substantial deregulation, and increased financial sophistication make it essential that agencies like NCUA have more, not less, independence if we are to recruit capable individuals for examiner positions, and through training and compensation, develop and retain a highly skilled examiner work force.

We believe the Carper-Lundine bill would enable NCUA to fully meet its statutory responsibilities while remaining fully accountable to the Congress, and to the credit unions we supervise and their members.

With regard to the Truth in Savings Act, NCUA has indicated support for this measure in the past. We remain in support of this effort to ensure that consumers are as informed as possible about savings rates and fees of depository institutions.

I do not believe there is a serious problem of misinformation or confusion on fees and rates in credit unions. During 1985, the regional offices received 17 complaints from credit union members alleging misleading or deceptive advertising of rates or fees, nondisclosure fees, confusing information, and so forth. Thus far in 1986, 10 complaints have been received. Given the 46 million members of federally insured credit unions, we regard these complaint numbers as extremely low.

While we believe the standardization called for in H.R. 2282 would be of great value to consumers, I would also, in closing, point out that in area of money laundering, Mr. Chairman, we specifically check for it in our examinations. This adds considerable time to each examination. The violations have been very few, but where there have been some, the evidence has been turned over to the Justice Department.

So we, too, are concerned with this, particularly as we continue to experience rapid growth, somewhere between 24 and 26 percent last year, and buffering along this year at about 30 percent. We have a need to coin old phrases now more than ever, for quality examinations. To cut back in any manner, shape or form now would be worse than adverse. It would be tragic for the credit unions of this country.

I thank you.

[The prepared statement of Mr. Jepsen can be found in the appendix.]

Chairman St Germain. Thank you.

Now we will hear from Robert Lawrence, Executive Secretary of the Federal Financial Institutions Examination Council.

STATEMENT OF ROBERT J. LAWRENCE, EXECUTIVE SECRETARY, FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Mr. Lawrence. I appreciate the opportunity to discuss the provisions of the Depository Institution Examination Improvement Act of 1986 as they relate to the Examination Council. The distinguished gentlemen on this panel who have presented their testimony addressed the questions in Chairman St Germain's letter. I plan to discuss the proposed legislation in the context of the Council's capabilities and its likely impact on the Council.

The Examination Council, which was established by the Congress in the Financial Institutions Regulatory and Interest Rate Control Act of 1978, has been in existence for over 7 years. The Council currently has 12 employees, all of whom are on loan to the Council from one of the five Federal agencies represented on the Council. None of these employees is involved in examinations of depository institutions. The Council, however, has access to considerable resources and expertise beyond its own staff.

It has successfully drawn on the skills of the staffs of the five Federal agencies and has benefited greatly from the advice and counsel of its State liaison committee, which is made up of five State supervisors of depository institutions.

With this substantial access to resources and expertise, the Council has accomplished many things to attain the congressional objectives set for it: To promote uniformity in the examination and supervision of depository institutions and to improve the overall supervisory process. Among those accomplishments are: uniform financial institution rating system; supervisory policy statements encompassing a wide range of supervisory concerns; uniform reporting systems for depository institutions; the development, with the assistance of the State liaison committee, of policies on the exchange of supervisory information among the Federal and State agencies; and a uniform commercial bank performance report and screening system that are used by the Federal and State bank regulatory agencies.

The Council is especially pleased with the progress of its examiner training program, which now offers 16 courses of instruction and will train about 2,500 examiners in 1986. Professional examiners, academics, and depository institution experts are used as faculty in the school. A professional educator heads the school, and the emphasis has been to develop advanced seminars that will take examiners to the frontiers of their particular specialties. Attendees at Council schools have consistently given the training program good reviews.

Under the Carper-Lundine bill, the Council would be assigned four responsibilities:

First, to conduct studies relating to appropriate compensation and employee benefits for Federal depository institution examiners;

Two, prepare proposals for consolidating to the extent feasible and practical, all programs for training Federal examiners and examiners of State agencies that want to participate;

Three, conduct studies relating to the feasibility of establishing a graduate degree program in financial management analysis for agency employees;

And four, establish minimum requirements for State examinations of federally regulated or insured depository institutions.

As to compensation and benefits, the Federal Financial Institution Examination Council and its staff have no special expertise in the development of employee compensation, retirement, and other employee benefit programs. The personnel and other departments of the agencies represented on the Council, however, have such expertise, and the Council could approach this study in the same way other Council studies have been accomplished; namely, through the use of specialists provided by the agencies.

The Council might also want to consider having overall direction of the study provided by outside contractors to ensure that the approach to and conclusions of the study are impartial. As you mentioned, Mr. Chairman, the Council already has a study underway in the area of benefits for examiners. As to examiner training, the Council already has the expertise for developing a proposal for consolidating Federal examiner training. The Council's manager for examiner education could develop such a proposal for Council review, with the interagency staff group that regularly addresses matters relating to examiner education.

The involvement of the Council's State liaison committee would also be essential in that the legislation contemplates the inclusion of State examiners from State agencies wishing to participate.

The Council, therefore, already has in place the administrative arrangements and training skills built up over 7 years of interagency training to develop the kind of proposal called for by the legislation.

As to the graduate degree program, some preliminary work on a graduate degree program has been accomplished by the Council, but a significant barrier to implementation of such a program is the agencies' resource limitations. The agencies cannot release examiners from their assignments for the extended period required for attendance in a graduate degree program, and this situation likely will continue until some relief from staffing limitations is obtained.

The Congress may wish to consider, therefore, delaying the submission date of a report on the issue from 1 year after the date of enactment of the legislation to 2 or 3 years after. Such a delay would allow time for implementation of a consolidated training program, the content of which would influence decisions regarding the appropriate approach to establishing a graduate degree program.

It would also provide time for the agencies to build their examination staff to the point where some attendance in a graduate program would be feasible.

With respect to minimum requirements for State examinations, primarily because of its State liaison committee, the Federal Financial Institution Examination Council would have the capability of developing minimum requirements for State examination of federally regulated or insured depository institutions. The State liaison committee has been very successful in fostering the cooperation of State depository institutions supervisory agencies on a number of Council projects, particularly in such areas as the exchange of supervisory information among Federal and State agencies, and in developing new reporting systems.

Along with the expertise provided by the Council's interagency supervision staff group, it should be possible to develop the kinds of standards envisioned in the legislation and to secure the cooperation of the State regulators in implementing such a program.

As to the effects of the legislation on the Council, as I have indicated, there appears to be no reason why the Council could not carry out effectively the responsibilities assigned by the legislation should Congress enact it. The Council might want to expand its own staff somewhat, because of the importance and magnitude of the projects involved.

For example, the Council might want to have its own staff member serve as the project manager for the compensation and benefits study. Another staff member might be a manager for the project on developing standards for State examinations. Such an approach would help ensure steady progress on the projects and independent staff views on the issues.

Also, there would be some impact on the Council's budget from the study of examiner compensation and benefits, if the Council were to make use of outside contractors for the study.

While only a modest increase in the Council's staff would likely be needed to conduct the studies called for in the proposed legislation, members of the subcommittee should recognize that should Congress call for implementation of a consolidated training program, a significant increase in the Council's staff and budget would be required. Presumably, there would be offsetting decreases in the staffs and budgets of the agencies.

Also, implementation of a program to review State qualifications in connection with the minimum requirements for State examinations of federally regulated or insured depository institutions would require a few additions to staff.

In conclusion, Mr. Chairman, should Congress enact the Depository Institution Examination Improvement Act of 1986, the Federal Financial Institutions Examination Council could position itself to carry out the responsibilities assigned to it by the act. The Council's experience in conducting studies on an interagency basis, its experience in conducting an interagency examiner training program, the contributions the State liaison committee can make in fostering Federal and State supervisory agency cooperation, and the Council's ability to tap the highly skilled agency staffs in support of its efforts, indicate that the Council could successfully carry out the mission assigned to it in the proposed legislation.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Lawrence can be found in the appendix.]

Chairman St Germain. Thank you.

Which study is actually in progress right now by the Council?

Mr. Lawrence. It is a study relating to trying to find ways to make the lives of examiners more attractive.

Chairman St Germain. Does that include looking at how often they have to leave home and be away from home for protracted periods of time? Does it include also geographical transfers?

Mr. Lawrence. Yes, sir.

Chairman St Germain. And the liability, personal liability the examiners have?

Mr. Lawrence. Yes, sir; it does.

Chairman St Germain. I assume that you are also looking at employee benefits, including pension plans; is that correct?

Mr. Lawrence. Yes; that is correct.

Chairman St Germain. Are you weighing the salary levels as well in this study to determine the relative importance? In other words, which is more important, the improvement of working conditions and benefits or salary or are both necessary?

Mr. Lawrence. Well, I think both are necessary. This study is really addressed at trying to provide information among the agencies. That is, it essentially is intended to describe what each of the five agencies is doing in the way of trying to improve the compensation, insurance benefits, development efforts, retirement, and so forth, for their examiners so that the other agencies can——

Chairman St Germain. When does the Council anticipate that this study will be completed?

Mr. Lawrence. It is anticipated, Mr. Chairman, that the results of this review will be presented at the June 13 Council meeting. As I say, there won't be any particular recommendations for Council action. It would just be for the information of the Council members.

Chairman St Germain. Let me see if I am properly understanding you. Are you really going to provide a spread sheet that will compare what each agency is doing in each category?

Mr. Lawrence. No; it won't.

Chairman St Germain. Is it going to recommend what the agencies should be doing?

Mr. Lawrence. Neither. It will not provide a spread sheet showing what each agency is doing, nor suggest what the people should do. It will simply be an inventory of what various agencies have been doing in this area without identifying the specific agency that is embarking on the particular program. It is just an inventory of actions for the information of the Council members.

Chairman St Germain. It doesn't sound too exciting to me. Why not say the Federal Home Loan Bank Board does this; NCUA does this? I thought I read in here something about improving communications. Our problem over the years has been no communications, and the reason we created a Council is to communicate, talk to each other, share information with each other. What is this secret all the time? Is there anything that endangers our national security if the agencies talk to each other?

Mr. Gray. I am Chairman of the Council. I can say we do speak frequently with each other. I think the task group that is doing this particular study will be presenting it for the first time to us. It has been underway for several months, and then we will have an opportunity to talk a great deal about it.

Chairman St Germain. Why not say Federal Home Loan Bank Board has their people transferred *x* number of times per 5 years, as opposed to the Comptroller? Why can't you tell which agency does what?

Mr. Gray. I wouldn't have any problem with that.

Chairman St Germain. Let's ask Mr. Lawrence. Why are you so secretive?

Mr. Lawrence. I think——

Chairman St Germain. It seems to me if you had a spread sheet, if you could compare what each agency does in each category, you would have something going.

Mr. Lawrence. I agree; that would be a more effective study. The staff group that is responsible for doing this study used the approach that I have described.

Chairman St Germain. This staff, did they come from the various agencies?

Mr. Lawrence. Yes; they do.

Chairman St Germain. So I guess it is not the people sitting here at this table but maybe the career people who like the secretiveness, is that it? Are they jealous of their prerogatives?

Mr. Lawrence. There may be more after that at the staff level; yes, sir.

Chairman St Germain. You know, there is a lot of disclosure going on. Every year we have to disclose all our assets and liabilities, et cetera. So you might communicate to the Examination Council, maybe we will bring them under disclosure unless they start talking to each other and being a little more revealing.

You heard the Chairman. Mr. Seidman, Governor Johnson, Mr. Clarke, Senator Jepsen, would you have any problem with identifying under your agency which benefits your examiners and personnel get and what the compensation is, how often they are transferred geographically? Would that be any problem?

Mr. JEPSEN. No; no problem at all. In fact, it would be most helpful.

Chairman ST GERMAIN. Mr. Gray?

Mr. GRAY. No problem.

Chairman ST GERMAIN. Comptroller Clarke.

Mr. CLARKE. No.

Chairman ST GERMAIN. Chairman Seidman?

Mr. SEIDMAN. We wouldn't have any problem but this may have developed because there has been a certain amount of competition among the agencies for people, so it may be that that is how it developed. I certainly wouldn't have any problem with exchanging information.

Chairman ST GERMAIN. Governor Johnson.

Governor JOHNSON. No; I don't think that would be a problem.

Chairman ST GERMAIN. Mr. Lawrence, you have your answer. Go forth and do the Lord's work.

Mr. LAWRENCE. We will do it.

Chairman ST GERMAIN. Mr. Barnard.

Mr. BARNARD. Thank you.

I certainly want to commend you this morning for having this very important hearing on the regulatory process, and I want to compliment Mr. Carper and Mr. Lundine on the introduction of this bill, of which we are having some discussion this morning.

At the same time, I want to welcome Governor Johnson. I think this is your first time to appear before our committee, and Senator Jepsen, I think you likewise. It seems like Messrs. Seidman, Clarke, and Gray are old hands, even though they have been in office only a few months.

Gentlemen, was any effort made on the part of your agency to discuss the predicament that you would be in with the application of the Gramm-Rudman-Hollings bill with OMB? Did you actually have an opportunity to sit down and discuss it with the OMB?

Mr. GRAY. I am sure we did. I have talked at my level and I know the staff has talked with the staff at OMB about this.

Mr. SEIDMAN. We had one meeting with OMB at which they informed us of the applicability, as they interpreted it, of both Gramm-Rudman-Hollings and the Anti-Deficiency Act.

Mr. BARNARD. They were completely oblivious, not considerate at all of the fact none of this money is taxpayer money; it always comes from fees and assessments?

Mr. SEIDMAN. They took that view. We submitted arguments on the other side of that, affirming our position and they have apparently denied those.

Chairman ST GERMAIN. Could you be more specific? To say you spoke with OMB is not very revealing. Who?

Mr. SEIDMAN. I spoke with Messrs. Miller and Wright and several others who were in the room.

Mr. BARNARD. I note, I am sure you intended to include in the record the letter that we got from the OMB?

Chairman **St Germain**. Very definitely.

Mr. **Barnard**. Opposing the legislation. Which nearly gives me reason to vigorously support it.

But it seems to me, one of the most important things in this country today, is the confidence that our public has in our financial institutions, and certainly this doesn't need to be minimized, it needs to be improved, especially with the plight that we have with the farmers and the energy and other situations, and I am just aghast that this consideration has been ignored by this administration, who, I am sure is as interested in the safety and soundness of our financial institutions as anyone else. I won't say anything further about that. I think that your testimony speaks for itself.

Gentlemen, I would like to know what does an individual agency do, beginning with the Federal right on through to the credit unions, what do you do to monitor consumer complaints and consumer attitudes? Do you do anything more than just listen to complaints or do you actually do any studies as to what problems consumers are having with financial institutions under your jurisdiction?

Governor **Johnson**. Yes, sir; we do, Congressman. As I mentioned briefly in my testimony, we conducted some fairly detailed surveys of bank customers to try and get some handle on the degree of concern about advertisement and disclosure problems, and we are in the process of reviewing that in preparing our policy statement on disclosure.

Mr. **Barnard**. Do you hear from any of the consumers groups like——

Governor **Johnson**. Consumer groups. When we put out our recent proposed changes in regulation Q on advertising interest rates on deposits, we sought comments from anyone so desiring, and, of course, a number of consumer groups commented.

Mr. **Barnard**. So you do take into consideration——

Governor **Johnson**. Absolutely.

Mr. **Seidman**. Yes. We have regulations in this area of advertising and we have an 800 number, which is always available for anyone who has a problem with the bank system to call us. We get somewhere over 11,000 calls a year. Very few of these calls have been about advertising rates. But we follow up on each one of them if there is a complaint in that way. We also receive complaints from banks about what other banks are advertising, and they ask us to investigate if they believe it is misleading and we do investigate those complaints when they come to us.

Mr. **Barnard**. Are they included in that 1,000 complaints?

Mr. **Seidman**. No; they usually are not.

Mr. **Barnard**. You get about 30,000 from banks I imagine?

Mr. **Seidman**. We get a lot more, a lot of them. There is a lot of policing of banks by other banks to ensure that no one gets unfair competitive advantage.

Mr. **Barnard**. Mr. Clarke?

Mr. **Clarke**. Like the Fed and the FDIC, we have consumer divisions. Within the last couple of months we have also met here in Washington with representatives of a wide variety of consumer groups from across the country and allowed them to express what was on their minds. I attended part of this meeting and found it to be very helpful. In addition, last year we conducted similar meetings in each of our six districts and prepared a report which was disseminated internally as well as sent to the participants in those meetings.

Mr. BARNARD. Do you follow that up then through your regulatory process in going back to the banks and questioning some of their advertising practices?

Mr. CLARKE. Yes, sir.

Mr. BARNARD. So, you actually carry out an enforcement process along with the monitoring process?

Mr. CLARKE. Yes, sir. Sometimes we pick up consumer problems in the course of examinations; sometimes we find out about them through meetings such as I described; sometimes we get them directly in the form of complaints that are either called in or written to us. We also get consumer complaints in connection with pending applications.

Mr. BARNARD. Mr. Gray?

Mr. GRAY. We have at the Federal Home Loan Bank Board the Office of Community Investment, which monitors consumer complaints. We also have at all of the Federal home loan banks, under the principal supervisory agent, generally a supervisory agent, who is responsible in this area. So, we not only receive consumer complaints in Washington, but we also receive them through the supervisory apparatus at the Federal home loan bank and the members of the Bank Board are briefed generally every 2 months as to exactly what the nature of the complaints are and we have a full report on that.

When we find in the advertising area that there are violations of a substantial body of regulations, we on occasion seek consent decrees.

Mr. BARNARD. Those actions have been taken, Mr. Gray?

Mr. GRAY. Well, I would have to check for the record, but I can recall some instances where we have gotten consent decrees. We are in the business of seeking compliance and we have enforcement authorities when there is not compliance.

Mr. JEPSEN. Mr. Chairman, I believe the credit unions may be unique in this area. There is a saying that when you come into your credit union and talk to the members, that you walk around like you own the place, because you do. Therefore, due to the voluntary boards and the closeness, openness, if you please, of the members of credit unions—they police themselves—there is no hesitation with any registering of complaints.

In addition, specifically, we have instituted a procedure at NCUA whereby we have open board meetings both in Washington and in individual States around the country. Right now we aim toward having about half held here and half held in the individual States.

We have a complaint process also at each one of our regional offices. We have six around the country. They were established to receive complaints and follow through on them.

Finally, our examiners have in their examinations a provision to review the compliance of many regulations with regard to the interests of consumers.

Again, as I indicated, we fortunately have had, in the registering and recording of complaints, only 17 in 1985 and we have 10 so far this year. We are very mindful of it and we are thankful that we have not had a lot of complaints. I would guess, and hope, that this would be evidence that we are doing a good job.

Mr. **Barnard**. My time has expired. I would note I don't believe any of these gentlemen have indicated their wholehearted support for the truth in savings legislation mainly because it seemed to be already being enforced and so forth, but I am sure there are going to be some horror stories tomorrow when we hear from some of the witnesses, and I would like for you to be mindful of what that testimony is, because very possibly I am going to ask you to come back and respond to it.

Thank you very much.

Chairman **St Germain**. Governor Johnson, tell me, you said you have conducted a survey. All of you said that. What did you do with them?

Governor **Johnson**. We look at the results and we study those, and then we decide, based on the responses that we get to the questions asked, whether something does need to be done, whether we need to adopt changes to a policy statement or seek legislation, or make changes in our regulatory policy.

Chairman **St Germain**. Do you know when the last time was you sought legislation in this area?

Governor **Johnson**. In this area? Well, since I have only been at the Fed for about 4 months, it certainly hasn't been during my tenure.

Chairman **St Germain**. I have been here 26 years. I haven't seen any yet. Mr. Seidman, sort of the same thing with you, you conduct a survey and look at it?

Mr. **Seidman**. Well, our interest, we record the complaints when they come in on our lines or by mail or from the banks and then——

Chairman **St Germain**. Then what do you do?

Mr. **Seidman**. We are working with the Fed and with the Comptroller's Office to review this and see whether our regulations in these areas ought to be changed. The reason that we haven't at this point sought legislation is that we think we probably can handle the situation through authority which we already have.

Chairman **St Germain**. Comptroller Clarke.

Mr. **Clarke**. Some of the complaints that we get are bank-specific. If we think they warrant some sort of enforcement or other action, we will deal with that bank on an individual basis.

Some of the information we get, particularly from meetings such as the one we had here in Washington and the ones in the district offices, forms a basis for the banking circulars that we put out. In the past 3 years we put out three banking circulars emphasizing national banks' disclosure responsibilities.

Chairman **St Germain**. At the same time, Mr. Gray, Senator Jepsen, any difference?

Mr. **Gray**. No.

Chairman **St Germain**. By the way, you all have public relations people, don't you? I know the Fed has a public relations person, FDIC, Comptroller? You know, it is a funny thing, I have never read once a release from any of your agencies in any of these areas, but the last couple of days I read a release. One of the consumer groups—they don't have any money, they operate on a shoestring—but they do surveys and they share those surveys with the general public. But again, the agencies, they secrete them away in their little old safes like at the Fed. I talk about the monks at the Fed. They hide them in the caverns of the Fed. The marble palace.

Why don't you share them with the public?

Governor **Johnson**. Well, we certainly can make some of the results——

Chairman **St Germain**. Careful, Governor Johnson, you are new over there. You are going to find out you can't make anything public.

Mr. **Barnard**. Let me say this: those surveys that these gentlemen would make, they won't be headline news because they would be telling how the institutions are doing good things and that does not make news; it is how the institutions are ripping off the public, that is what is going to make the headlines.

Chairman **St Germain**. That is what they say; you never read about the cat that didn't get caught in the tree.

Mr. **Barnard**. I hope I don't get caught in a tree.

Chairman **St Germain**. I must say that on the delayed funds availability, there were studies made public by the consumer group. They were carried in the press, but the Fed just started their study in 1978 and I never saw a darn thing from them. That is why we adopted the legislation.

Governor **Johnson**. I admit our publications may not be the sexiest publication. We do publish a lot of survey results in the Federal Reserve Bulletin; maybe not a widely read document by——

Chairman **St Germain**. It is not on the best seller list?

Governor **Johnson**. No; I agree.

Mr. **Barnard**. Is it in Penthouse or Playboy?

Chairman **St Germain**. Wait a minute, I am talking about the Wall Street Journal, the New York Times.

Mr. Wylie.

Mr. **Wylie**. Thank you, Mr. Chairman.

In my opening statement, I indicated some concern about including under Gramm-Rudman-Hollings the regulatory agencies as far as the caps are concerned, Mr. Clarke. I have more or less been up front on that and have talked to the head of the OMB, Mr. Miller about it. Recently, Chairman St Germain and I received a letter from OMB Director Miller which I hope you have seen, and I don't know if you have or not. He opposed removal of the examiners from the current pay caps which also applies to Mr. Seidman's shop.

OMB also vigorously objects to the exemption of the agencies retroactively for 1986; from Gramm-Rudman-Hollings. OMB is less clear about exempting the agencies for fiscal year 1987 and beyond, yet its arguments against exempting the agencies retroactively would seem to apply prospectively.

[The letter referred to by Congressman Wylie from OMB Director Miller follows:]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUN 0 3 1986

Honorable Fernand J. St Germain
Chairman
Subcommittee on Financial Institutions
  Supervision, Regulation and Insurance
Committee on Banking, Finance,
  and Urban Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I want to apprise you of the strong opposition of the Office of Management and Budget to H.R. 3567, the "Depository Institution Examination Improvement Act of 1986" and a revised discussion draft of the bill, dated May 22, 1986.

The Department of the Treasury has given you its views on H.R. 3567. I will confine my remarks to certain provisions of the legislation currently before the subcommittee that are of the most immediate concern to OMB. I urge the subcommittee, in addition, to obtain and consider the views of the Department of Justice and the Office of Personnel Management, as well as any additional views of the Department of the Treasury, before acting on this bill. I should note here that OMB fully shares the Treasury's opposition to any proposal that would eliminate the Treasury Secretary's authority to provide "general directions" to the Office of the Comptroller of the Currency. As the Treasury Department noted in its May 9th letter, this authority has existed since 1863 and is important to the management of that Department.

Compensation of Federal Examiners

The Administration opposes the further exemption of the officers and employees of the financial institution regulatory agencies from the laws and regulations that are otherwise applicable to Federal employees. Existing law already gives each of these agencies significant flexibility in hiring and compensating their professional staffs. The President has recognized that piecemeal changes in this area are undesirable and recently proposed a new Government-wide personnel compensation system that would be phased-in over a period of time. Several features of this system would afford the regulatory agencies additional flexibility to tailor compensation packages to fit their individual needs. Our position on this legislation, however, does not preclude further consideration of such changes as may be proposed by the Administration in the context of recommendations by the Task Group on Regulation of Financial Services (the so-called Bush Task Force).

Independent Agency Status

The Administration also opposes the features of this legislation that would make the regulatory agencies more "independent" of the Executive branch than they may already be. These features would exempt the agencies from otherwise applicable budget, staffing, appropriations, and apportionment requirements. Part of the underlying rationale for these proposals appears to be predicated upon a belief that congressional and Executive branch oversight of the kind applicable to other agencies is inappropriate and unwarranted because the operations of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board and the Comptroller of the Currency, among others, are funded through assessments on depository institutions. I am firmly convinced that these features of the legislation are shortsighted and ignore the overall context in which Executive branch budget policy is formulated and executed.

Presidential oversight of the regulatory agencies' funds is critical because of the direct impact on the budget, should it ever become necessary, of backing up the deposit insurance funds with the resources of the Treasury. Significant Federal outlays could also result if the contingent liabilities incurred in resolving the problems of troubled depository institutions ever materialize as actual costs. Concerns of this nature are especially pertinent during this period, as banks and thrifts adjust to a changing environment. I believe that Executive branch oversight of financial regulatory activities and the deposit insurance system, through the apportionment process, ensures that assessments collected from depository institutions are adequate and that they are used in a manner that is consistent with uniform budget concepts.

That an agency is not funded by direct appropriations in no way negates the need for Presidential direction and control. Assessments levied upon banks and thrifts are user fees for services that the Government provides these institutions, including chartering, examination, supervision, and insurance. These fees are collected in part to finance the deposit insurance system which is backed by the Federal Government. Indeed, these assessments are similar to fees that other agencies impose for services rendered. Fees are included in the budget; increases in funds collected reduce the deficit, while increased agency outlays add to it.

Simply put, it is very difficult to discern any valid reason for differentiating between depository institution regulatory agencies and other Federal agencies for budget purposes. Indeed, one could argue that the public's confidence in the stability of the Federal deposit insurance system rests, at least in part, upon a belief that the regulatory agencies are part of the Federal Government. A perception that the agencies are not part of the Government could erode that confidence.

Gramm-Rudman-Hollings Treatment

OMB also objects to the exemption of the depository institution regulatory agencies retroactively for 1986 from the requirements of the Balanced Budget and Emergency Deficit Control Act. This proposal would set an obviously undesirable precedent, which could lead to similar requests from other Federal agencies. The projected outlays of the regulatory agencies were used in calculating the base from which the 1986 sequestration percentage was determined. A retroactive exemption would effectively constitute a supplemental 1986 appropriation to these agencies of previously-sequestered amounts. These objections would not apply, of course, should Congress elect to exempt these agencies from Gramm-Rudman-Hollings prospectively (i.e., for fiscal year 1987 and thereafter).

Conclusion

In my view, each agency of the Executive branch, whatever its mission and constituency, and however funded, must be fully accountable to the elected representatives of the American taxpayers, the President and the Congress. To do otherwise -- to enact this legislation, for example -- would seriously impair that accountability and unwisely interfere with the President's authority to manage the Executive branch.

For these reasons, OMB strongly opposes this legislation.

Sincerely yours,

James C. Miller III
Director

c: Honorable Chalmers P. Wylie

Mr. **Wylie**. Now, on page 13 of your statement, you say "the Administration favors the Congress reconsidering the applicability of *Gramm-Rudman-Hollings* for 1987 and beyond. What exactly does that statement mean?"

Mr. **Clarke**. That statement means what it says. As you know, we are required to submit our testimony for clearance by OMB, and today's testimony was submitted to and cleared by OMB with that statement in it. It is my understanding that the administration does support——

Mr. **Wylie**. The administration would support exemption?

Mr. **Clarke**. For 1987 and beyond.

Mr. **Wylie**. But not for fiscal year 1986?

Mr. **Clarke**. That is correct. That is set forth in the letter that you and the chairman received.

Mr. **Wylie**. Is that a change in philosophy or is it just the fact that there was a commitment earlier on for fiscal year 1986? We are almost through fiscal year 1986; it wouldn't have that impact?

Mr. **Clarke**. I think that is right for the reasons that were set out in the letter. I think the feeling was it would be less disruptive to make whatever exemption is made prospectively.

Chairman **St Germain**. Would you yield?

Mr. **Wylie**. Yes.

Chairman **St Germain**. Let's read this.

Mr. **Wylie**. It is a little obscure.

Chairman **St Germain**. "Retroactive exemption would effectively constitute a supplemental appropriation to these agencies in the previously sequestered amounts." Then it says, "These objections would not apply, of course, should Congress elect to exempt these agencies from Gramm-Rudman-Hollings prospectively, that is for fiscal year 1987 and thereafter."

But that does not mean OMB is going to come up and testify on behalf of these exemptions. As a matter of fact, I would venture to say they probably would go just the other way.

Mr. **Wylie**. They are sort of inviting us to suggest that it would be all right. I don't know, I am trying to figure out what they are saying. I think in order to help you, that we probably ought to go ahead and pass this bill. That is where you are coming from this morning, isn't it?

Mr. **Clarke**. Yes, sir.

Mr. **Wylie**. Do you think the same thing?

Mr. **Seidman**. Yes, sir.

Mr. **Wylie**. Do you support giving the Examination Council the authority to impose uniform examiner training requirements as well as the authority to establish minimum standards for testing and certifying examiners?

Are there differences in the banking and the thrift industries that might justify different procedures for training examiners?

Mr. **Gray**. I think there are differences. I think there are certain common denominators for examination that we share among ourselves at the Examination Council, but the institutions we regulate are engaged in rather different kinds of activities. Ours is by and large in real estate activities, which is a tough area, of course, to examine. But there are differences and I think the common denominator that you could use goes only so far.

Mr. **Wylie**. What would you think about that, Mr. Clarke?

Mr. **Clarke**. In my view, the fundamentals of examining financial institutions—evaluating credits, compliance—testing, and what have you—are pretty much the same from one type of financial institution to another. There are differences among financial institutions, however. Obviously, what thrifts do differs from what commercial banks do. What multinational banks do differs from what community banks do. Thus, we need to have specialized training, for example, for examiners who deal with multinational banks.

I would certainly support the idea of trying to have as much uniform and joint training as possible, and there already is a lot of that going on, as you probably know. We also need to have the flexibility to provide additional specialized training that may be peculiar to our particular organization.

Mr. **Wylie**. I want to get back to the other question I asked earlier and the chairman picked up on, and I am not sure I got a clear answer. I said that as an overabundance of caution, we ought to pass the law. In any event, I think that maybe the OMB Director has not signed off on it, because he said in his view each agency of the executive branch, whatever it is, however funded, must be fully accountable to elected representatives—the President, the Congress. Otherwise, to enact this legislation, for example, would seriously impair that accountability and unwisely interfere with the President's authority to manage the executive branch.

You account for the fees and assessments now, don't you? There isn't any problem of accountability on this issue is there?

Mr. **Seidman**. I believe we fully account. We are audited by the GAO, our information is published, the amounts are examined carefully by the banks, because they are the ones in our case who receive a certain refund of their premium if we operate in a successful manner. I really do not understand what he means by an account unless he means account to OMB.

Mr. **Wylie**. I think that is what he means.

Chairman **St Germain**. May I ask the gentleman to yield? I have a great idea.

How about sending a little old letter to the gentleman who is the OMB Director, James Miller III—imagine he is a III—it is very important to get that in. I am sorry I didn't get that in before.

We will ask him to explain what he means in the last two paragraphs, because that conclusion sort of wipes out what he said in the previous sentence. Let's ask him directly what he means; tell him not to obfuscate and becloud the issue; be clear, so that we and the American people know what he is talking about, whether or not he is encouraging or discouraging the monitoring of money laundering, et cetera.

Mr. **Wylie**. You helped me make the point. I appreciate that. When he says retroactive exception would effectively constitute a supplemental in 1986 appropriations to those agencies, that doesn't make any sense to me, because it is not taxpayers'——

Chairman **St Germain**. Mr. Barnard says that ain't true. He is formerly a member of a financial institution community and chairman of a very important Subcommittee on Government Operations that looks into these things. The banks pay through the nose—financial institutions, I am sorry—credit unions, S&L's, pay through the nose.

Mr. WYLIE. We ought to let the OMB Director know we have read the letter.

Chairman ST GERMAIN. We have read the letter and don't know what he is talking about. We would like it clarified.

Mr. McKinney.

Mr. MCKINNEY. I thank you, Mr. Chairman.

Time is running short since we have a housing bill coming to the floor. I am going to go back to the primer level to get a couple of points clear in the record which I gather you are going to have to pay for one of these days.

Do you receive any taxpayers money through the Government, Mr. Johnson?

Governor JOHNSON. No.

Mr. MCKINNEY. Fine.

Do you receive any taxpayer money through the Government, Mr. Seidman?

Mr. SEIDMAN. No.

Mr. MCKINNEY. Do you, Mr. Clarke?

Mr. CLARKE. No, sir.

Mr. MCKINNEY. Do you receive any, Mr. Gray?

Mr. GRAY. No.

Mr. MCKINNEY. Do you have any, Senator?

Mr. JEPSEN. No.

Mr. MCKINNEY. Do you receive any, Mr. Lawrence?

Mr. LAWRENCE. No.

Mr. MCKINNEY. It seems to me with the basic interpretation of the law—by the way, the gentleman from Georgia, who tends to be a laissez faire advocate, and the gentleman from Connecticut, who is sometimes more confused than that, are both going to be voting for this legislation because of that idiotic letter from the Office of Management and Budget.

Isn't there a basic Federal charter to watch what is done with the taxpayers' money? There is nobody else that has money. We are aware of that. Isn't OMB's job, according to your understanding, Mr. Johnson, to supervise the expenditure of Federal tax revenues?

Governor JOHNSON. That and borrowed funds through the Treasury.

Mr. MCKINNEY. Mr. Seidman.

Mr. SEIDMAN. Yes.

Mr. MCKINNEY. Mr. Clarke.

Mr. CLARKE. Yes.

Mr. MCKINNEY. Mr. Gray.

Mr. GRAY. Yes, sir.

Mr. MCKINNEY. Senator.

Mr. JEPSEN. That is my understanding.

Mr. MCKINNEY. So, in other words, does OMB have any Federal or legislative or moral right to look into your affairs, tell you what to say, how many people to hire and so on and so forth? Is there anyone who thinks they do? You don't have to put yourselves in print because you may end up dead on Pennsylvania Avenue for all I know.

In other words, this is just simply one more power grab on the part of OMB to enter through a door that is not there, not their concern, not their interest, not their law, not their charter, nor anything else that comes from this body in the 16 years I have been here. Their interference has been magnanimously available on almost every inch of the Government. Gentlemen, that sounds like primer talk, but I am interested.

Now, another thing, since we are running short of time, you guys appear to me like a movie I used to take my kids to called the Bad News Bears. It fascinates me that the entry salary was $14,500 before you took it up. My son even makes more than that teaching in a private school and private schools don't pay.

You all must have employees from somebody in Fairfield County and New York. What do they live on—subway grates?

I am fascinated. I pick up the paper, and I see that a law school graduate working on Wall Street can start at $50,000 a year. So, let's follow this through. Mr. Gray, let's say you have trained the person for 5 years, and he knows what is going on and everything else. What are you paying him after 5 years of training?

Mr. **Gray**. After 5 years, it would be approximately $25,000 to $30,000.

Mr. **McKinney**. Mr. Clarke.

Mr. **Gray**. That is what we would have been, we are not paying that now.

Mr. **Clarke**. In the range of $32,000 to $35,000.

Mr. **McKinney**. I know what you are paying now and I am embarrassed.

Mr. **Seidman**. Same.

Mr. **McKinney**. What do you suppose this skilled expertise and knowledge of the ins and outs of the intricacy of banking are worth to a banker?

Mr. **Seidman**. Our people receive offers considerably higher than that on a fairly frequent basis?

Mr. **McKinney**. About $50,000 a year don't they?

Mr. **Gray**. Or more.

Mr. **McKinney**. As I say, gentlemen, your testimony today, reminds me of the Bad News Bears on a beat up school bus going to play the Matson. There isn't any way you can win under the way it is going now. The biggest problem in the United States of America is laundering of drug money, which makes drug selling profitable, and we can't even get close to it. You have all talked about reports, and the chairman has asked you about reports. I think reports are wonderful, but guess what, there is nobody to look at the darn things, is there? I am sure your basements are full of reports that no human being has seen except the person that filed them.

We have to do something about it, Mr. Chairman.

Chairman **St Germain**. Mr. Bush is Vice President and he has a task force on regulatory reform.

Mr. **Gray**. Had.

Chairman **St Germain**. When did they wind up there? You were represented or were you indeed on it?

Mr. **Gray**. I was on it.

Chairman **St Germain**. You were on it?

Mr. **Gray**. Yes, sir.

Chairman **St Germain**. Can you recall how long ago you had your last meeting?

Mr. **Gray**. The last meeting was——

Chairman **St Germain**. Over a year ago, wasn't it?

Mr. **Gray**. Probably 2 years ago. One and a half or two years ago.

Chairman **St Germain**. Now, why doesn't OMB look at this? I assume there was money spent on that study, on regulatory reform. It has been 2 years and we ain't seen anything yet have we, Chairman Gray?

Mr. **Gray**. No, sir.

Chairman **St Germain**. There has been nothing forthcoming?

Mr. **Seidman**. We have received just a short time ago a very thick document from OMB which was a draft I gather of the report, and just glancing through it, I notice they took care of antideficiency and Gramm-Rudman-Hollings and everything by specifically including the regulatory agencies in that report. So they have already looked out for themselves for their view.

Chairman **St Germain**. Excuse me, but is this the Bush Task Force on Regulatory Reform?

Mr. **Seidman**. Yes.

Chairman **St Germain**. I don't think the agency's part of that would agree—that is just a draft, right?

Mr. **Seidman**. It is out for comment.

Chairman **St Germain**. Out for comment. I am hoping you are going to have strong comments, those of you in the agencies, on that particular section. It is really 2 years? Hallelujah.

Mr. **Gray**. Mr. Chairman, I may stand corrected.

Chairman **St Germain**. Could be a year-and-a-half.

Mr. **Gray**. May be a little more than a year.

Chairman **St Germain**. A lot of pomp and circumstance when it was appointed and started up and so forth. I guess the Vice President is busy with other things. Mr. Leach.

Mr. **Leach**. Like the majority of members of the banking community, I am very sympathetic to a more flexible approach on pay and salaries. I would like to ask a question relating to the cost to the public of loose supervision.

It is my sense that a loose supervision not only provides potential vulnerabilities to FDIC and FSLIC and credit union funds, but in addition, if there is any great scandal at the Federal Reserve Board in the 1970's, it was loose supervision that allowed the large banks to expand too greatly abroad. And that raises the whole issue; what is the cost to the public? And I think the cost to the public is likely to be most minimized with strong regulators that are well compensated and well paid.

Some of the testimony, particularly from Senator Jepsen, raises a second issue, that it is a little unseemly for a regulator to be offered a higher compensated job, particularly in the business which one is trying to regulate. When you lose your credit union regulators to credit unions, that means there is implicit thinking in the back of all regulators' minds they are about to have a job in the very institutions they are regulating. That is one of the greatest arguments for pay comparability, and it is something I think this Congress ought to be very sensitive to.

Now we all know that Gramm-Rudman-Hollings, is probably the best single governmental initiative for your institutions in the sense that if we don't bring down these deficits, sky-rocketing interest rates put the savings and loan industry in some jeopardy. In one sense, bringing down the deficit is the best thing that could happen now. The question is how to do it most appropriately.

Virtually every Federal programming initiative, from defense to the social areas, comes to us and says "To cut our program is penny wise and pound foolish." But it strikes me that you are suggesting to us that government-dictated private sector penny pinching could cause a good deal of public expenditures later. Since your funds derive, as the Senator from Connecticut points out, from the private sector I think is plenty of justification for greater flexibility in statutory language.

Now the staff, and we have a very wise staff, has written a whole series of questions. There are three or four I would like to raise just because I think they haven't been raised yet in this hearing, and they do bear on this bill.

The first is for Chairman Gray. On page 1 of your statement, you indicate that the Bank Board generally supports the thrust of the Carper-Lundine bill, but you do have reservations. At page 5, you go on to say "These provisions would diminish the Bank Board's flexibility in exercising its regulatory authority."

What are the provisions that diminish the Bank Board's authority, and what would you suggest to correct the bill?

Mr. GRAY. I would suggest a very small correction, and that is I would like the bill to make sure that the Bank Board, which is head of the supervisory apparatus, determine what the salaries and benefits for our examiners ought to be. I suppose I am always just a little wary about recommendations that become more than recommendations. In other words, we have made so much progress in just a year in terms of the numbers we have been able to attract and so forth, and I don't want anything that would take away from our flexibility and hinder our continued progress in this regard.

Mr. LEACH. If you have specific things, why don't you present them in writing?

Mr. GRAY. Yes, sir.

[In response to the request of Congressman Leach, the following information was submitted for the record by Chairman Gray:]

The Bank Board is concerned about the provision of the proposed legislation that would consolidate all federal financial institutions agency examiner training programs under the Examination Council.

We are also concerned with the provision that would require us to take into account private sector pay scale studies conducted by the Examination Council in setting salaries for our examiners.

These provisions could unnecessarily and adversely effect our ability to achieve maximum efficiency. We would also note that the Bank Board as well as the other financial institutions agencies have unique activities and responsibilities that require specialized training for examiners. As we explained in our prepared statement, the Bank Board has already established examiner training and performance standards which are specifically tailored to meet the special needs of thrift institutions. Since we already have the necessary flexibility to oversee the examination function as a result of the transfer of our field examiners to the Federal Home Loan Bank districts, the Bank Board recommends that it be exempted from both of these provisions. We would also note that the other financial institutions agencies have similar concerns with these provisions.

Mr. LEACH. Let me say you and your predecessors, in my judgment, have provided as outstanding leadership to Federal regulatory agencies as any I know of in recent times, and I think this Congress is very appreciative of that.

Governor Johnson, you noted the Federal Reserve is voluntarily taking a 4.3-percent cut. You also noted your examinations are up, and so the question is: Where are you saving?

Governor JOHNSON. Obviously, we are making up the difference in other parts of the budget, and I would say I can't give you the details, but I think if you look, a large amount of the offset is coming in the area of support services and overhead costs, and we are evaluating some programmatic changes, too.

But I would say that the prime area has been the service area.

Mr. LEACH. I would like to submit some of these questions in writing if that were possible, but I would like to end with one question. Senator Jepsen testified he has misgivings about the authority given to the Examination Council. He states the NCUA's experience has been that the Council almost by necessity is primarily oriented toward banks and banking problems.

Could you respond to that concern, Mr. Lawrence?

Mr. LAWRENCE. I think to this point most of the Council's effort in the training program has been in banking-related courses. Personally, I see no particular reason why the training would have to be limited to banks, that it couldn't be expanded to other areas.

Mr. LEACH. I would hope you would consider that. The credit union movement has grown rather dramatically. We are talking of something on the order of $80 billion, something to that effect.

Second, the credit union method goes largely unnoticed by the public, and maybe some of the regulators have done an impressive job in shoring up its funds. Maybe you are saying it needs less attention, I don't know. I would just hope, speaking for my fellow town residents of Davenport, IA, you give a particularly strong attention to the concerns of the National Credit Union Association.

With that, Mr. Chairman, I do have other questions——

Chairman ST GERMAIN. Without objection, we will be submitting questions to the entire panel to be answered in writing.

Chairman ST GERMAIN. Mr. Wortley.

Mr. WORTLEY. Thank you, Mr. Chairman.

Comptroller Clarke, is there any facet at all of your regulatory activities in oversight that is funded with any taxpayer money?

Mr. CLARKE. No, sir.

Mr. WORTLEY. Services rendered?

Mr. CLARKE. Our funds come from assessments on the banks: examination fees not covered by assessments, fees for merger and charter applications, and interest on investments.

Mr. WORTLEY. That being the case, why should you come under Gramm-Rudman?

Mr. CLARKE. Well——

Mr. WORTLEY. Did you argue the case with Mr. Miller or anyone else?

Mr. CLARKE. Obviously, for the reasons indicated in my testimony, I don't think that we should be under Gramm-Rudman. Part of the problem is that we were strongly led to believe we would not be covered by the Gramm-Rudman legislation. When we found out that we were, and the reason we were is that our budget happens to have an index number in the Federal budget, it was too late for us to overcome the momentum. We did make a legal argument that we should not be covered. We still think our legal argument is correct, but we were overruled by a variety of people, and we are under Gramm-Rudman.

Mr. WORTLEY. Prior to Gramm-Rudman, had OMB approved a request by your office to hire additional staff members?

Mr. CLARKE. Yes, sir. For 1987, as I indicated in my——

Mr. WORTLEY. For 1987, but not for 1986?

Mr. CLARKE. We had requested the increase for 1987. We had made the request initially at Treasury, and it was passed on to OMB——

Mr. WORTLEY. How are these plans going to be affected?

Mr. CLARKE. Those plans will be affected very adversely in two respects. First, the cuts we had to take for 1986 have limited our ability to recruit and hire those people who we hoped to have on board before 1987. Second, if we continue to be subject to Gramm-Rudman and have to take further cuts in our budget, we will not be able to hire the 150 additional full-time equivalent employees approved for 1987. Because we are under a hiring freeze now, we are not even replacing people who leave, let alone hiring any additional personnel.

Mr. WORTLEY. The functions of your office are being seriously impacted upon by Gramm-Rudman. Is OMB currently apportioning your annual budget under the Anti-Deficiency Act?

Mr. CLARKE. We have received a notice from OMB that we would be apportioned.

Mr. WORTLEY. Was this before Gramm-Rudman or——

Mr. CLARKE. This was following Gramm-Rudman.

Mr. WORTLEY. Has apportionment affected the ability to respond to emergency situations? Would it affect your response?

Mr. CLARKE. It could. It has not to date because we are not technically being apportioned at this point. We simply have been told we would be apportioned in the context of enforcing compliance with our Gramm-Rudman budget cuts. We had already undertaken to comply with Gramm-Rudman and to report our compliance to the Secretary of the Treasury before that came along. That is being done irrespective of the apportionment.

Mr. WORTLEY. Mr. Chairman, could I ask unanimous consent to enter into the record a letter from Mr. Miller responding to Chairman Garn of the Senate Banking Committee, which relates to sequestering and apportionment?

Chairman ST GERMAIN. You want the correspondence entered at this point in the record?

Mr. WORTLEY. If I could enter it into the record.

Chairman ST GERMAIN. That is fine. Without objection, so ordered.

Mr. WORTLEY. Thank you.

[The correspondence referred to by Congressman Wortley, from OMB Director Miller to Chairman Jake Garn of the Senate Banking Committee, follows:]

issue
BANKING
Financial
 Institutions

JAKE GARN, UTAH, CHAIRMAN

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United States Senate
COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS
WASHINGTON, DC 20510

March 17, 1986

Honorable James C. Miller III
Director
Office of Management and Budget
Room 252
Old Executive Office Building
Washington, D.C. 20503

Dear Mr. Miller:

We are writing to express our strong opposition to the application of the Gramm-Rudman-Hollings Act to the administrative expenditures of the financial institution regulatory agencies -- specifically the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, the National Credit Union Administration and the Comptroller of the Currency. We believe Congress never intended the automatic percentage outlay reductions mandated by Gramm-Rudman-Hollings to be applied to the administrative expenditures of these agencies.

First of all, the administrative expenses for all of these agencies are raised by premiums or fees on the institutions subject to their regulation. None of their activities are funded from general tax revenues.

Second, all of these agencies are operated through a revolving fund or corporation whose assets would revert to the industry in the event of liquidation. Thus as a matter of law, these funds cannot be used to reduce the national debt.

Third, the Gramm-Rudman-Hollings Act specifically exempts insurance payments and other contractual obligations of these agencies from the sequester provisions. Since the workload of these agencies is determined directly by the size of these insurance payments and other liquidation expenditures, it follows logically that the administrative expenditures necessary to carry out these functions should be similarly exempt. To assert otherwise is to render meaningless the exemptions specifically provided in law.

For example, if these agencies are ham-strung by arbitrary limitations on their administrative expenses, they cannot take timely action to close or merge failing institutions or take other preventative supervisory actions with the result that the ultimate cost to the insurance funds administered by these agencies will be much higher. Surely the Congress did not intend this anamolous result when it enacted the Gramm-Rudman-Hollings Act.

As a matter of fact, the proposed reductions in the administrative expenditures of these agencies could not have come at a worse time in the history of our financial system. Bank and thrift institution failures have reached an all time high, and the projections indicate these failures will continue for the next several years. Unless the supervisory agencies are permitted to take timely action to deal with the emerging problems in our financial system, we can be faced with a crisis of public confidence that can have profound repercussions on our financial stability.

Accordingly, we expect that you will carry out the clear intent of the Congress by exempting the administrative expenses of these agencies from the sequester provisions of Gramm-Rudman-Hollings. We are also looking into the application of the Anti-deficiency Act particularly as it relates to apportionment, and other statutes to the financial institution regulatory agencies and may communicate with you further on these related issues in the near future.

Sincerely,

Jake Garn
Jake Garn
Chairman

William Proxmire
Ranking Minority Member

Donald W. Riegle, Jr.

Chic Hecht
Chic Hecht

John Heinz

Mack Mattingly

Phil Gramm

Alfonse D'Amato
Alfonse M. D'Amato

Christopher J. Dodd   Paul Sarbanes

Christopher J. Dodd   Paul S. Sarbanes

Jim Sasser   Alan J Dixon

Jim Sasser   Alan J. Dixon

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON D C 20503

MAY 28 1986

Honorable Jake Garn
Chairman
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your Committee's concerns about the application of the Balanced Budget and Emergency Deficit Reduction (Gramm-Rudman-Hollings) Act to the financial institution regulatory agencies (the Federal Deposit Insurance Corporation (FDIC), the Federal Home Loan Bank Board (FHLBB), the Federal Savings and Loan Insurance Corporation (FSLIC), the National Credit Union Administration (NCUA), and the Office of Comptroller of the Currency (OCC)). Although we share many of your concerns, we must enforce this Act as written. We do not have the discretion to exempt these agencies. Under current law, these agencies are to be subject to the sequestration process. More specifically, it is clear to us that Congress exempted only the prior legal obligations of the FDIC, FSLIC, and the National Credit Union Share Insurance Fund (NCUSIF). As you know, the Congressional Budget Office and the General Accounting Office have endorsed this interpretation.

We fully agree with you that all of the expenses of these agencies are financed by fees assessed to their respective financial institutions and that they are not funded directly by general tax revenues. However, these user fees are established in Federal statute to pay for Federal services such as bank examinations or, in the case of deposit insurance to help compensate for the risk which the Federal Government is assuming. As such, these fees are similar to other Federal user fees, for example, FHA mortgage insurance premiums, SBA Business and Investment Loan Guarantees, Maritime Administration Title XI loan guarantees and many others found throughout the Federal budget. Increases in the amount of these Federal funds collected will reduce the total Federal deficit, while increases in costs financed with these Federal funds will increase the Federal deficit. Clearly, these agencies and their deposit insurance funds are an integral part of the Federal budget and directly affect the deficit.

Moreover, we believe that the stability of the deposit insurance system and the resulting public confidence in that system result from the fact that the deposit insurance funds are part of the Federal Government, not the fact that the insurance funds are self-supporting. By being part of the Federal Government and being included in the Federal budget, these Federal agencies must comply with the rules which we apply to all Federal agencies for consistent treatment of Federal financial operations. This may occasionally expose these agencies' budgets to the type of across-the-board spending reductions which the Congress intended in passing Gramm-Rudman-Hollings.

When OMB and CBO issued the sequestration report on January 15 of this year, we held jointly that only administrative expenses of these agencies should be subject to sequestration and all capital expenditures and insurance expenses should be exempt. The GAO, however, interpreted the law more broadly and expanded the sequestrable base to encompass all non-insurance expenses. As you know, Gramm-Rudman-Hollings precludes the Executive Branch from varying in any manner from the report issued by the Comptroller General. We are therefore obligated to execute the sequester consistent with the GAO view.

We share your concern over the condition of the financial system and agree that we need to have a strong examination and supervision function within the financial regulatory agencies. While it may be argued that administrative expenditures should be exempt because they are directly related to the insurance function, we have found no legal justification for defining these expenditures as being prior legal obligations, as you suggested in your letter. Thus, there is no legal way to reverse the President's sequestration order for the current fiscal year.

This situation could change for 1987, should the Congress enact legislation exempting these agencies from the sequestration process, or if Congress adopts a budget that meets the Gramm-Rudman-Hollings targets and thereby avoids the automatic sequestration of these agencies' funds. In that regard, may I respectfully urge your support for the President's 1987 budget proposals, which would produce a deficit within the $144 billion target.

On the matter of apportionment, we will be apportioning the FDIC and the OCC shortly, in major part to assure that the sequestration order for 1986 is implemented. In addition, we are concerned about the nature and size of the obligations being made by the depository insurance and banking regulatory agencies during this time of strain in the banking sector of the economy. OMB has been apportioning the FSLIC and the NCUSIF for many years and we believe it is desirable to apply the same procedures to the FDIC and the OCC. OMB has never impaired the FHLBB or the NCUA from carrying out their primary missions, and there is no reason to expect any difficulties with the FDIC and OCC apportionments.

Apportionment is an important tool because it requires Federal agencies to follow Government-wide rules for recognizing legal obligations, recording them promptly, and keeping financial records. It helps to ensure that agencies carry out their responsibilities in a manner that is consistent with uniform budget concepts. This is particularly important in the banking area because of the many alternative methods these agencies have for taking action to resolve problems of troubled financial institutions. Some of these alternatives entail substantial costs. Moreover, some can involve substantial future contingent liabilities, which can produce major increases in the deficit should those contingent liabilities materialize as actual costs. Apportionment thus permits the President's senior advisers to have some oversight and advance knowledge of the legal obligations, especially the increase in contingent liabilities, which an agency is undertaking and the potential Federal outlays that could result. The Executive branch cannot responsibly fulfill its duties to administer the laws in an effective manner without such tools as apportionment.

Thank you for the opportunity to explain our position on these matters to you and other members of the Banking Committee.

Sincerely yours,

James C. Miller III
Director

c: The Honorable:

William Proxmire
Donald W. Riegle, Jr.
Chic Hecht
John Heinz
Mack Mattingly
Phil Gramm
Alfonse M. D'Amato
Christopher J. Dodd
Paul S. Sarbanes
Jim Sasser
Alan J. Dixon

Chairman ST GERMAIN. At the conclusion of the testimony of Mr. Lawrence, who was the last to testify, without objection, we will put in a letter—well, there is a date of June 3, 1986 here. It is the Executive Office of the President, Office of Management and Budget, and it is addressed to the chairman of the Subcommittee on Financial Institutions. Also three pages with a copy to Hon. Chalmers Wylie. We will put that in the record at the conclusion of that testimony because it indeed has been discussed during this hearing this morning.

[The letter referred to may be found on page 74.]

Mr. WORTLEY. Does your agency have a policy that annually grants each of your employees a regional pay differential over and above governmentwide cost-of-living adjustments?

Mr. SEIDMAN. We have a separate regional adjustment that not all employees get or receive. Only those who are in a region.

Mr. WORTLEY. Are your employees receiving those adjustments this year?

Mr. SEIDMAN. At this point they are; yes, sir.

Mr. WORTLEY. In spite of Gramm-Rudman, they are still getting their——

Mr. SEIDMAN. We have complied with Gramm-Rudman by putting on a hiring freeze, by eliminating certain training programs, by eliminating proposed computer programs, particularly designed to handle very large bank failures, and we have met voluntarily the reductions in that way.

Mr. WORTLEY. What is the range of that regional increase?

Mr. SEIDMAN. The range, I think, is from nothing up to the highest I think is about 15 to 16 percent; something in that area.

Mr. WORTLEY. Could it be this year's range might be somewhere between 7 and 20 percent on top of the base pay? Could it be that high?

Mr. SEIDMAN. It would be possible if that is the way the numbers come out. It is actually computed on living costs in the area.

Mr. WORTLEY. I would like to follow that line of questioning and ask some of the other regulators if they have a comparable type of compensation program that grants regional pay increases, regional pay supplements. Governor Johnson.

Governor JOHNSON. No; we don't have a regional adjustment, so to speak. We do service different areas of the country and base our pay on comparable salaries in various locations, but we don't have an annual regional adjustment.

Mr. WORTLEY. Mr. Clarke.

Mr. CLARKE. We do not have any regional adjustment.

Chairman ST GERMAIN. Chairman Gray.

Mr. GRAY. We make regional adjustments. It costs more, of course, to live and work in New York than it does in Topeka, and we take that into account.

Mr. WORTLEY. My time has expired. Oh, excuse me——

Mr. JEPSEN. We do not have any, although I wish we did. It costs much more to live and work in Boston than it does in Whitefish, MT.

Mr. WORTLEY. My time has expired, Mr. Chairman.

Chairman ST GERMAIN. Gentlemen, we talked a little earlier about surveys and studies, and you told us about all these wonderful surveys and studies you have been doing. Now, how many of you have conducted a survey to determine what the increase in the cost of a NOW account has been in the past year or two and what it costs on an average for a person to maintain a NOW account?

Governor JOHNSON. Well, first, I am not aware we are doing any particular survey on that, but——

Chairman ST GERMAIN. Five people here—I can't take a dissertation from each one of you. I want an answer to the question. Has the Fed done a survey on that point?

Governor JOHNSON. We certainly look at the features of NOW accounts as they change from year to year.

Chairman ST GERMAIN. The increased costs.

Governor JOHNSON. There have been reduced minimum balance requirements.

Chairman ST GERMAIN. The young gentleman there has provided you some information on that?

Governor JOHNSON. Yes. He says no.

Chairman ST GERMAIN. That is what I want to know. Chairman Seidman.

Mr. SEIDMAN. I am not familiar with any study.

Chairman ST GERMAIN. Mr. Clarke.

Mr. CLARKE. We have not done any independent study. We, of course, look at material prepared by other people.

Chairman ST GERMAIN. Mr. Gray.

Mr. GRAY. Not that I know of.

Chairman ST GERMAIN. Chairman Jepsen.

Mr. JEPSEN. None.

Chairman ST GERMAIN. Next, any survey—let's do it this way. If any of you have done it, just speak up. Has any one of your agencies done a study on the cost of interest checking accounts and the increased costs over the past year or two? I guess not. Do any of you know how many of the institutions offer no-frill accounts and what they cost?

Governor JOHNSON. I would have to submit that for the record. I don't know.

Chairman ST GERMAIN. If you had had a survey——

Governor JOHNSON. I am not aware of a survey.

Chairman ST GERMAIN. They can jump up. They can say, "Yes, we happen to have done that one."

Governor JOHNSON. I am told we have done a study on service charges.

[Governor Johnson subsequently submitted the following information for inclusion in the record of the hearing:]

> At the request of the Federal Reserve Board's Consumer Advisory Council, Board staff undertook a study of bank service charges and fees and their impact on consumers. That study examined both the current level of service charges for various types of deposit accounts and retail services, as well as changes in these prices over the 1979-84 period. The study was presented to the Consumer Advisory Council in January 1985. The study received wide public attention at that time.

Chairman ST GERMAIN. When was that published?

Governor JOHNSON. About a year ago.

Chairman ST GERMAIN. Last year. You haven't done one since last year? Was that released to the press at the time?

Governor JOHNSON. Yes.

Chairman St Germain. Have any of you done the study of the fees at the Nation's largest bank and what the minimum balance requirements are at the large banks?

Governor Johnson. Yes.

Chairman St Germain. When was that one done?

Governor Johnson. The same time as the earlier one.

Chairman St Germain. Anyone else? OK.

Mr. Clarke. Mr. Chairman.

Chairman St Germain. Yes.

Mr. Clarke. We have done, I am advised, a survey of bank policies and disclosure regarding delayed funds availability, service charges, and fees.

Chairman St Germain. When was that done?

Mr. Clarke. A year and a half ago.

Chairman St Germain. What happened with that survey or that study?

Mr. Clarke. It has been maintained internally.

Chairman St Germain. That didn't help the consumer or the customer very much.

Mr. Clarke. It does help us in the way we deal with the financial institutions, and we did, as you know——

Chairman St Germain. Wouldn't it be nice for the consumer to know about this?

Mr. Clarke. Perhaps. But it would depend on the nature of the study. I am sorry, I don't know the details of the survey.

Chairman St Germain. That is not very helpful to the consumer, customer, no matter the reasons for not publishing it. There is a new requirement that people opening accounts must hold a major credit card. In the case of 13.5 percent of NOW accounts, 11.6 of money management accounts, if these people want those types of accounts, they have to have a major credit card. Have any of you done a survey on this point?

Mr. Clarke. I don't think we have.

Chairman St Germain. You know, it is a peculiar thing. Here is a press release, "Cost of Interest-Bearing Accounts Soar." This consumer group with volunteers surveyed 225 banks and savings institutions. The San Francisco Consumer Action Group and 20 other local consumer interest groups.

It seems peculiar to me with all of your resources, when you tell me about the surveys, Governor Johnson, the Fed does I am not too impressed, or any of these other surveys, because the consumers haven't benefited from these at all. We have to wait for the Consumer Federation of America to get volunteers to do this on a voluntary basis, and these facts are released. Sometimes maybe we ought to have some consumer people in your agencies—this all came up as a result of Mr. Barnard's questions. This relates to the Lehman bill on disclosure.

Now, one question, and then I am going to go to Mr. Carper, who has authored one of the pieces of legislation before us. Let me ask this of you gentlemen. With respect to disclosure—now all of you have different regulations. Most of them are not identical as far as consumers being able to compare rates offered by banks, thrifts, and credit unions.

Now, you have also spoken in your testimony of requiring all creditors provide either the straight or annual percentage yield. Now, the difference between the two—correct me if I am wrong—is that the annual percentage yield includes the simple interest rate and the rate of compounding. Now, isn't that perhaps the better way to have it expressed for the consumer to best understand? In other words, using annual percentage yields, because that includes simple interest rate and the rate of compounding, whereas when you say simple interest rate, you don't really know what you are going to get at the end of the year? Am I wrong on that?

Governor JOHNSON. We put this issue out for comment because we are proposing changes to regulation Q. Of course, our feeling was that may have been a more comprehensive way to report the annual percentage yield.

Chairman ST GERMAIN. Because the compounding can vary from account to account, institution to institution?

Governor JOHNSON. Yes. However, comments on this issue have split evenly between wanting to keep the old simple interest statement and wanting the annual percentage yield.

Chairman ST GERMAIN. Who is commenting?

Governor JOHNSON. Anyone who desires. I don't have the detailed breakdown of each individual comment or how they split on the issue, but——

Chairman ST GERMAIN. No; you say anyone who desires. How do those comments go out? To whom do these go out for comment?

Governor JOHNSON. We published the proposal in the Federal Register for comment.

Chairman ST GERMAIN. That Federal Register—those comments I don't suppose would come from the fellow who works at the garment plant or the lady who works in the jewelry factory in Pawtucket, RI.

Governor JOHNSON. Their union or trade association.

Chairman ST GERMAIN. Five or six offices in the same institution can comment.

Governor JOHNSON. That is possible.

Chairman ST GERMAIN. Is there anything that precludes or prohibits that?

Governor JOHNSON. No.

Chairman ST GERMAIN. So if you are going to look at the weight of the comments, is that really, in all fairness, is that fair to the consumer?

Governor JOHNSON. I think——

Chairman ST GERMAIN. How do you reach a decision?

Governor JOHNSON. I think we look at how the comments come in—for example, whether from a trade association or an individual.

Chairman ST GERMAIN. Could we have a memorandum for the record telling us how these comments are analyzed and how you reach conclusions as to whether or not, you would go to simple interest or annual percentage yield?

[In response to the request of Chairman St Germain, the following letter with attached information was received from Governor Johnson:]

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON

MANUEL H. JOHNSON
MEMBER OF THE BOARD

June 26, 1986

The Honorable Fernand J. St Germain
Chairman
Subcommittee on Financial Institutions
  Supervision, Regulation and Insurance
Committee on Banking, Finance and
  Urban Affairs
House of Representatives
Washington, D.C.   20515

Dear Chairman St Germain:

As you requested during the hearing held on June 4, I am pleased to enclose a staff memorandum on the process of evaluating public comments in Board rulemaking procedures.

I hope this information is useful to your Subcommittee. Please let me know if I can be of further assistance.

Sincerely,

Enclosure

Governor Johnson subsequently submitted the following in response to a request from Chairman St Germain:

Board Staff Memorandum on the Process of Evaluating Public Comments in Board Rulemaking Procedures

When the Board of Governors solicits public comment on proposed amendments to the Board's regulations, a notice is published in the Federal Register which contains a statement of the purpose of the proposed amendments, an analysis of the proposals, and, generally, draft regulatory language reflecting the proposals. The Board also issues press releases on the proposals. The Federal Reserve Banks routinely provide copies of the Federal Register notices to affected depository institutions. Commentators generally are given 30-60 days to submit their comments, although a longer period may be given for actions involving significant policy issues or technical issues which may require detailed analysis.

Comment letters are received by the Secretary of the Board. The Secretary's office logs in the comment letters and distributes copies of the letters to the Board staff assigned to the particular proposal. In addition, copies of comment letters are placed in the Board's Freedom of Information office where they are available to the public absent a showing by a commentator that all or a portion of his letter should be accorded confidential treatment. In such instances, the non-confidential portion of the comment letter is made available to the public.

A summary of the comment letters is prepared after the close of the comment period for Board consideration. This summary typically contains a numerical breakdown of commentators by category (e.g., commercial banks, thrift institutions, trade associations, consumer associations, and individuals). If multiple letters are received from the same commentator as, for example, a commercial bank with each department submitting comments, the multiple letters are aggregated and regarded as a response from the bank.

The summary of comments concentrates on the specific issues raised by the particular proposal. The number of commentators expressing opposition to the proposed resolution of a specific issue is generally stated with major reasons for their opposition. Similarly, favorable comments are tabulated with reasons for their support of the specific proposal. The observations of specific commentators may be stated, particularly where the comment is from a trade or consumer association or governmental entity, or where the comment provides a particularly clear articulation of the concerns expressed by a number of commentators. Significant alternatives raised by the commentators to the specific proposals also are stated. The memorandum summarizing the comments is then submitted to the Board. Individual comments are also available to Board members for their review.

When the comment summary is submitted to the Board, it is accompanied by a staff memorandum analyzing the issues raised in the comments and making recommendations concerning adoption, modification or rejection of the original proposals. This memorandum considers the arguments raised in the comments as well as the type of commentators making the argument and the number of comments supporting each position. Board determinations are based on the documents presented and discussion at the Board table.

This system of analysis and summary of comments is designed to insure the fullest consideration of the arguments advanced by the commentators.

Chairman **St Germain**. You put it out for comment in the Federal Register, Governor Johnson. Very frankly I have half a million people in my congressional district. If 50 people read that Federal Register, other than people in financial institutions, I would be awfully surprised. I am probably way high. Mr. Clarke.

Mr. **Clarke**. I would just observe that in some cases reporting yield on the basis of compounding may not be the best form of disclosure. People may not leave their money on deposit long enough for interest to be compounded. If so, reporting the annual percentage yield can leave a misleading impression that they are really getting a higher absolute interest rate than they are because that is the number that gets put up in lights. If everybody were required to disclose the simple interest rate on a uniform basis, they could also disclose the basis on which it would be compounded, but everybody would be starting with the same bottom-line interest rate. I am not arguing that point strongly one way or the other. I just want to point out that there are inherent problems with the annual percentage yield.

Chairman **St Germain**. If you don't leave it in for a protracted period of time.

Mr. **Wylie**. Will the chairman yield?

Chairman **St Germain**. Yes.

Mr. **Wylie**. Governor Johnson, you are talking in terms of issuing a policy statement. Did I understand you correctly there?

Governor **Johnson**. On the disclosure issue. On interest rate advertising, we are proposing to amend our regulation Q.

Mr. **Wylie**. To issue a policy statement.

Governor **Johnson**. Revision to regulations.

Mr. **Wylie**. Why don't you issue a regulation?

Governor **Johnson**. On disclosure?

Mr. **Wylie**. Yes.

Governor **Johnson**. We don't have the authority.

Mr. **Wylie**. That is why you think you need this bill, is that it, for disclosure on truth in saving?

Governor **Johnson**. Our institutional view is we are not seeking legislation because our surveys do indicate that consumers are getting an adequate response. However, there are some uniformity questions we are trying to work out between the agencies.

Mr. **Wylie**. That is precisely where I was coming out. I think the questions of the chairman here are germane, if you use that—will your policy statement have uniform application to the other agencies, to the banks, to the savings and loans?

Governor **Johnson**. Our policy only applies specifically to member banks. However, we are trying to work out uniformity with the other agencies so that it will apply to all depository institutions.

Mr. **Wylie**. There almost has to be some kind of standardized form.

Chairman **St Germain**. I have to comment. Governor Johnson, it is obvious that your surveys aren't worth a diddly-do. They are worthless. To say that you are going to do these things as a result of your surveys after the questioning I put you through on what the consumer group did on surveys that are important to the average consumer, you know, you had one a year ago, it is in the vaults. I mean, let's forget it.

Mr. Carper.

Governor **Johnson**. In all fairness to our consumers affairs division I think they have done fairly extensive work on the survey.

Chairman **St Germain**. Very sensitive work, and it is highly secretive. I can tell you the Russians will never find out about it.

Governor **Johnson**. I am sure we can make it available.

Mr. **Carper**. Thank you, Mr. Chairman.

I want to thank each of the witnesses for your very constructive testimony today.

A question, first of all, for Mr. Gray. When you transferred your examiners to the home loan banks, did you also transfer funds from the civil service retirement system into a newly designed or into a different retirement system of the home loan banks, and if so, would you sort of reflect on any of the difficulties that you might have encountered in making that type of change?

Mr. **Gray**. We didn't find any difficulties. The examiners chose to do this, many of them incidentally were represented by labor unions. Essentially, they chose to do this on their own.

Mr. **Carper**. Is there general agreement among your employees or the people affected that the retirement system they have now inherited or moved into is at least as satisfactory as the one they left?

Mr. **Gray**. Absolutely no question.

Mr. **Carper**. I think you alluded to this. Since the transfer of your examiners, can you give us some feel for what change, if any, you have detected, what changes you have effected in total compensation? I think you mentioned that it may have increased by a third the starting wage. What changes have you seen in morale, and what kind of changes have you seen in the number of examiners you have hired?

Mr. **Gray**. I think it results from a lot of things. First of all, the benefits available in the Federal home loan banks are substantially greater than what were offered to our employees when they were in the civil service system, I think rather substantially. In fact, the incentives for moving over from the protection provided by civil service to the Federal home loan banks would have to have made it worth their while.

In terms of reimbursement of travel expenses, it is much more simple now than it was before. When you are a Federal employee, you have to go through a rather elaborate procedure. But for these employees now at the Federal home loan banks, they are not on a per diem, for example, the $75 per day. They have to be away from their families, they have to be on travel for substantial periods of time. We make it easier for them, generally speaking, to spend more time with their families and occasionally to take the plane home or get home for the weekend, whereas before they weren't able to do that. We are very good to our examiners, and I think that is extremely important if we want to keep them as examiners.

Mr. **Carper**. Have you detected any change in the short while these changes have been effective? Have you noticed any——

Mr. **Gray**. Morale is much higher.

Mr. **Carper**. How about turnover? Have you had enough time to determine whether——

Mr. **Gray**. Turnover is significantly down. I did a check this morning with the Director of the Office of Examinations and Supervision, and our latest count on an annualized basis would be somewhere around 5 to 8 percent compared to much much higher rates before. That is a bit skewed, because we have some examiners going from one district to another district.

So I am not sure that I can give you a scientific answer as accurately as I would like. But, compared to previously, there is no comparison.

Mr. **Carper**. Are you hiring experienced personnel as examiners in some cases, most cases, a few cases?

Mr. **Gray**. I am sorry, I didn't hear the question.

Mr. **Carper**. Are you hiring experienced personnel as examiners?

Mr. **Gray**. In some cases, we are hiring people who have a great deal of expertise in that area, yes. In some cases, actual examiners. In many cases, of course, we are hiring MBA's out of the university. But they are not held in terms of their ability to progress within the bank district the way they were under the Salary Classification Act, where you could only go up one step each year. In other words, we are treating these people pretty much the way a business would. If they show signs of putting in a fine performance and working themselves up because of their energy, because of their talent, their commitment, et cetera, they have an opportunity to make great progress through our system. They are not held down by artificial constraints on their movement upward.

Mr. **Carper**. Thank you.

Mr. Clarke, a question or two for you, please. Have you lost any examiners to the home loan bank since last July?

Mr. **Clarke**. Yes, sir, we have.

Mr. **Carper**. In replacing them, have you generally hired experienced personnel or for the most part inexperienced personnel?

Mr. **Clarke**. It is very difficult for us to replace personnel, particularly examiners, with experienced people. We really home-grow virtually all of our examiners. We are just not able to attract experienced people given our compensation constraints.

Mr. **Carper**. Thank you. I have a number of other questions I would like to ask unanimous consent simply to submit those in writing to our witnesses, Mr. Chairman.

Chairman **St Germain**. Without objection.

Mr. **Carper**. I again want to thank you, sir, for holding this hearing and each of you for appearing and testifying. Thank you.

Chairman **St Germain**. I want to express my deep appreciation to the panel members. It has been an interesting morning, and hopefully some messages will go out to OMB. At least you can rely on this member to do his utmost to make sure those messages go out.

We will be, without objection, submitting additional questions in writing for the record.

Chairman **St Germain**. Again we thank you. I want to have a second with you. I want to reaffirm some numbers we discussed during the testimony.

The subcommittee will be in recess until tomorrow morning at 10 o'clock.

[Whereupon, at 12:40 p.m., the subcommittee was adjourned until 10 a.m., Thursday, June 5, 1986.]

[Letters of invitation to witnesses of this day's hearing and other pertinent material to the hearing can be found in the appendix.]

APPENDIX

June 4, 1986

Statement of Hon. Stan Lundine

The Depository Institution Examination Improvement Act of 1986

Mr. Chairman, today's hearing on the Depository Institution Examination Improvement Act marks an important step toward the resolution of a serious problem facing the banking industry today. For several months now my colleague Tom Carper and I have been meeting with industry and agency officials to discuss what is generally agreed to be a real gap in the safety and soundness of our banking system.

As you know, the impetus for this legislation was the recognition that the agencies supervising our nation's depository institutions are in many instances unable to maintain an adequate pool of well-trained examiners and supervisors. Of course, without a sufficient number of experienced and expert personnel, early detection of a financial institution's problems is extremely difficult. We can only guess at how many of the more serious problems which we have experienced in the past few years could have been avoided through more thorough scrutiny by an efficient and well-staffed examination system.

The financial services industry is a rapidly changing, constantly growing one. Keeping up with the often subtle yet complex changes that occur will present an increasing challenge to federal regulatory agencies in the months and years to come. These agencies' resources will certainly be taxed and stretched. While I do not pretend that the legislation that Congressman Carper and I have introduced will solve all of the problems that these agencies may face, I do think that it is a beginning. The compensation and training of examiners and the structure of the examination system itself must be scrutinized. Changes in these areas will most certainly lead to an improvement of the overall safety and soundness of the system.

In the months since this bill was originally introduced, Congressman Carper and I have worked to accomodate the suggestions of those agencies most closely involved with the examination process, and the suggestions of the Financial Institutions Subcommittee staff. The amended version of our legislation, introduced yesterday, reflects these suggestions.

Mr. Chairman, I believe that this legislation brings to light problems that are often overlooked during discussions on regulatory reform, and I am happy to have the opportunity today to hear what our panel of witnesses has to say on this subject.

STATEMENT

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS

THE HON. THOMAS R. CARPER

MR. CHAIRMAN, TODAY'S HEARING REPRESENTS A SIGNIFICANT MILESTONE IN THE EFFORTS OF MANY OF US TO ENHANCE THE EXAMINATION AND SUPERVISION OF OUR NATION'S DEPOSITORY INSTITUTIONS, A KEY TO ENSURING THE SAFETY AND SOUNDNESS OF THESE BANKS, THRIFTS AND CREDIT UNIONS. I WANT TO TAKE THIS OPPORTUNITY TO THANK YOU AND YOUR STAFF FOR YOUR EFFORT AND SUPPORT IN THIS ENDEAVOR AND TO THANK MR. WYLIE AND HIS STAFF FOR ALL THEIR CONSTRUCTIVE INPUT.

LAST OCTOBER, MY COLLEAGUE STAN LUNDINE AND I INTRODUCED THE DEPOSITORY INSTITUTIONS EXAMINATION IMPROVEMENT ACT, H.R. 3567. WE WERE GRATIFIED THAT ALMOST THREE QUARTERS OF OUR COLLEAGUES ON THE COMMITTEE JOINED US AS COSPONSORS OF THIS BILL. AFTER MONTHS OF DISCUSSIONS WITH THE AGENCIES INVOLVED AND COMMITTEE STAFF, YESTERDAY CONGRESSMAN LUNDINE AND I INTRODUCED H.R. 4217 - A MODIFIED VERSION OF OUR ORIGINAL BILL. THIRTY-SEVEN OF OUR COLLEAGUES ON THE BANKING COMMITTEE JOINED US AS ORIGINAL COSPONSORS OF OUR REVISED LEGISLATION.

THE ORIGINAL BILL GREW OUT OF HEARINGS CONDUCTED BY THIS SUBCOMMITTEE AND MEETINGS CONGRESSMAN LUNDINE AND I HELD WITH REPRESENTATIVES OF THE FINANCIAL INDUSTRY AND THE REGULATORY AGENCIES. ONE COMMON THREAD RAN THROUGH THE DISCUSSIONS AND HEARINGS: THE QUALITY OF THE EXAMINATION AND SUPERVISORY PROCESS MUST BE IMPROVED. THEY ALL ADDRESSED THE IMPORTANCE OF IMPROVING THE COMPENSATION AND TRAINING OF EXAMINERS IN ORDER TO REDUCE TURNOVER RATES AS A FUNDAMENTAL STEP, IN ORDER TO ENHANCE THE SAFETY AND SOUNDNESS OF THE SYSTEM. INDUSTRY REPRESENTATIVES STATED THAT THEY WOULD PAY MORE, UP FRONT, FOR BETTER EXAMS. THEY ALL REALIZE THAT THEY ARE PAYING FOR INADEQUATE EXAMINATION AND SUPERVISION THROUGH LOSSES TO THE INSURANCE FUNDS.

SINCE THESE INITIAL DISCUSSIONS, FURTHER EVENTS HAVE UNDERSCORED THE IMPORTANCE OF OUR EFFORTS. THE ADVENT OF GRAMM-RUDMAN HAS PREVENTED THE AGENCIES FROM HIRING SOME OF THE ADDITIONAL EXAMINERS THEY SO DESPERATELY NEED. THE INAPPROPRIATE APPLICATION OF APPORTIONMENT TO THESE AGENCIES SERIOUSLY THREATENS THEIR ABILITY TO EFFECTIVELY CARRY OUT THEIR FUNCTIONS. THEREFORE, OUR REVISED LEGISLATION CONTAINS REMEDIES FOR THESE SERIOUS PROBLEMS AND WILL ULTIMATELY PROVIDE US WITH A STRONGER SUPERVISORY PROCESS.

ONCE AGAIN, MR. CHAIRMAN, I COMMEND YOU FOR DEVOTING TWO DAYS OF HEARINGS TO THESE ISSUES, AS WELL AS TO THE ISSUE OF TRUTH IN SAVINGS. I LOOK FORWARD TO A THOROUGH DISCUSSION OF EXISTING PROBLEMS AND POTENTIAL SOLUTIONS WITH THE WITNESSES.

For release on delivery
10:00 a.m. EDT
June 4, 1986

Statement by

Manuel H. Johnson

Member, Board of Governors of the Federal Reserve System

Before the

Subcommittee on Financial Institutions Supervision,

Regulation and Insurance

of the

Committee on Banking, Finance and Urban Affairs

United States House of Representatives

June 4, 1986

I appreciate the opportunity to appear before the Subcommittee today on behalf of the Federal Reserve Board to discuss H.R. 3567, the Depository Institutions Examination Improvement Act and H.R. 2282, the Truth in Savings Act. I will begin by offering the Board's evaluation of H.R. 3567 and then turn to H.R. 2282. The Board's responses to the questions posed in Chairman St Germain's letter of May 27, 1986, are appended to this testimony.

The purpose of the proposed legislation is to improve the quality of depository institutions supervision by assuring that the federal supervisory agencies provide adequate compensation and benefits to attract and retain competent personnel, by improving the efficiency of examiner training programs and by providing for the certification of state supervisory agencies. We are in agreement with the basic objectives of the proposed legislation, and have taken steps to achieve many of them. We do have reservations concerning the arrangements the bill would establish to accomplish certain of the objectives, however, and I will discuss them as I proceed.

With respect to the major provisions of the bill that would exempt the supervisory agencies from federal civil service laws and the federal budgetary process, we would point out that the Federal Reserve is already exempt from these constraints under specific provisions of the Federal Reserve Act. Accordingly, the Board believes that the Federal Reserve should be excluded from this portion of the bill. At the same time, the Board supports the legislation insofar as it applies to the other supervisory agencies. The legislation will provide them with the flexibility necessary to establish their own employee compensation programs and budgets and thereby enable them to maintain a qualified examination and supervisory staff.

The proposed legislation would also require the Examination Council to conduct regional studies of private sector pay scales and employee benefits for jobs comparable to those of federal examiners. The Council would report the results of these studies to the federal regulatory agencies, which would be required to take them into account in setting pay scales for their personnel.

Under existing practice, the Federal Reserve Banks, which employ substantially all of the System's examiners, set their salary levels commensurate with those being offered by banks and other financial institutions in their local areas. In determining what the local salary levels are, the Federal Reserve Banks conduct surveys that are essentially the same as envisioned for the Council. The Federal Reserve would be prepared to share with the Council the information that the Reserve Banks gather. Our survey experience, we would point out, is that, while the federal pay scale is below going compensation levels in certain sections of the country, it is significantly above local levels in other sections.

As important as the issue of examiner compensation is, it cannot be considered without regard for the continuing need to control costs government-wide and to achieve budgetary savings consistent with the Gramm-Rudman-Hollings legislation. Although the Federal Reserve System is not covered by Gramm-Rudman, Chairman Volcker has stated the Federal Reserve System's intention to comply voluntarily with the spirit of that legislation. Accordingly, the Board's 1986 budget was revised to meet the 4.3 percent reduction mandated by Gramm-Rudman for other government agencies and comparable reductions were made by the Reserve Banks. Despite this commitment to budgetary restraint, the Federal Reserve is increasing the number of its on-site examinations and hiring additional examiners to help conduct them. These measures are, in our opinion, necessary to meet growing supervisory concerns regarding banks and bank holding companies that are under the Federal Reserve's regulatory authority. Because of these concerns with supervision, we support the bill's objective to provide the other supervisory agencies with adequate budgetary flexibility to meet increased requirements for bank supervision.

It is, of course, particularly difficult to strengthen our supervisory function at a time when our overall budget is being reduced. Of necessity, we have expanded the supervisory function by less than we had planned and, to meet the added expenses of the expansion that has been accomplished, have had to make cuts in other areas of our budget. Thus, if the Congress were to provide the other agencies with flexible compensation and budgetary authority, we would take guidance from this action in setting our own salary and budgetary policies.

The proposed legislation would also provide for the development of a proposal to consolidate all federal agency examiner training programs under the Examination Council and would require that the Council study the feasibility of establishing a graduate education program for examiners. As I understand it, the Council has the concept of a graduate education program under study and is not, under its current authority, restricted from offering such a program. With respect to consolidating all other examiner training in the Council, we believe that in addition to the present schools the Council conducts for all the agencies, serious consideration should be given to having the Council assume responsibility for conducting certain "core" courses for examiners. We would stop short, however, of having the Council assume all educational responsibilities for the agencies. Each agency has unique activities and responsibilities that require specialized training for its examiners -- for example, in the area of bank holding company inspections and Edge Act corporation examinations. Thus, it is essential that the agencies retain the flexibility to offer their own courses to meet their special training needs.

The proposed legislation would also direct the Council to establish standards for judging the adequacy of state supervisory agencies and to conduct reviews of individual state supervisory departments to determine whether federal agencies should rely on their examinations. It seems more appropriate to have the federal supervisory agencies ultimately charged with the responsibility for ensuring the safety and soundness of state institutions assigned the requisite legal authority for certifying the states. Thus, the Board cannot support this portion of the proposed legislation because it does not establish the necessary interrelationship of authority and responsibility.

I would point out that the federal agencies that have statutory supervisory responsibility over state-chartered institutions already have in place programs to coordinate their supervisory efforts with state authorities. The Federal Reserve, for example, has voluntary arrangements with several qualified states to conduct alternate examinations on an annual or more frequent basis. Furthermore, we have recently undertaken to expand its use of examination reports prepared by state examiners.

I might add that the Federal Reserve System has also taken steps to help supplement the training programs for state examiners. The Board has authorized scholarship funds for the Education Foundation of State Bank Supervisors and instructed the Reserve Banks to provide financial assistance directly to state bank examiners who attend Federal Reserve training schools.

In summary, we support the main thrust of the bill to provide, where needed, adequate compensation and budgetary flexibility -- authority the Federal Reserve already has --to assure a continued high priority for adequate supervision of the nation's depository institutions. We also see certain benefits to be gained from further coordinating the examiner training programs of the agencies. We do not, however, believe it is appropriate to vest in the Council responsibility for certifying the acceptability of a state's examination reports for use by the federal supervisory agencies.

I would now like to direct the balance of my comments to the provisions of H.R. 2282.

H.R. 2282 would address deposit account advertising and disclosures by establishing uniform requirements applicable to all depository institutions. The bill calls for advertisements regarding interest rates to state an annual percentage yield and an annual rate of simple interest as well as other factors. With respect to disclosures, depository institutions would be required to provide schedules of fees and charges for all existing accounts and prior to any changes in the schedules. Rule writing authority to implement these requirements for all institutions is given to the Board of Governors of the Federal Reserve System.

Since 1969, the Board has had comprehensive regulations on advertising in Regulation Q. In January of this year, the Board proposed a series of amendments to update, clarify, and simplify its current advertising requirements. This proposal addresses many of the same advertising issues covered by H.R. 2282, such as requiring an annual percentage yield ("APY") and a statement concerning service charges in advertisements. At the same time the Board directed its staff to explore the need for action on disclosure of detailed account information to bank customers. The Board also supports providing bank customers with clear and complete information when they open their accounts and is planning a Policy Statement encouraging disclosures by member banks.

In considering this Policy Statement, the Board has taken into account that the level of information provided to bank customers has been high. Over the past two years, only approximately 4 percent of the total complaints received by the Board on member banks pertained to advertising and disclosure issues similar to these contained in the bill. Moreover, a January 1986 Survey of Consumer Attitudes conducted for the Board by the University of Michigan indicated that 94 percent of current deposit account owners felt that they had received the information that they needed to know about the terms and conditions of their accounts. Eighty-two percent of the families who opened a checking account and 73 percent of those opening a savings account in the past two years reported they had received a written explanation of the terms and conditions of their new account. Although the survey did not provide information on the nature of the disclosures made in written form, it did indicate that a significant majority of consumers are receiving what they believe to be adequate disclosures on their accounts in written or oral form.

While H.R. 2282 would have the advantage of extending uniform advertising and disclosure requirements to all depository institutions, including member and nonmember banks, thrift institutions and credit unions, it may unduly limit flexibility. In particular, by attempting to establish uniform requirements applicable to all accounts, H.R. 2282 does not allow sufficient latitude to tailor advertising and disclosure requirements to individual account characteristics and individual customers' use of accounts. For example, H.R. 2282 requires advertisements regarding the rate of interest payable on an account to state the annual percentage yield ("APY") and the annual rate of simple interest. Similarly in its January proposal, the Board included three alternatives for advertising interest on deposits: simple interest, or an APY, or both. While the Board's Consumer Advisory Council supports requiring both the APY and the simple interest rate, public commenters were divided as to which alternative was most appropriate. Given this difference of opinion, flexibility may be required in determining if the same requirements should apply to all.

Other provisions of H.R. 2282 may also hamper regulatory flexibility in establishing clear and simple advertising requirements. It may be unnecessary to require advertisements containing annual percentage yields to refer to the method of compounding or to require advertisements to state the method of paying interest. Similarly, the statement concerning account charges required by H.R. 2282 refers to elements characteristic of transaction accounts, such as transaction fees, and elements of time deposits, such as early withdrawal penalties, and might be simplified to avoid confusing bank customers as to the charges applicable to their account.

With respect to disclosures, H.R. 2282 could be read to require depository institutions to provide customers with schedules of fees and charges applicable to all accounts and services and a description of all changes in the previous schedules when account terms are changed, even through such schedules may not be applicable to the customer's account. In order to avoid confusion, disclosure requirements should be limited to changes in information relevant to a customer's deposit relationship with the institution.

Allow me, at this point, to reiterate our basic position. The Board supports clear advertising and full disclosure by depository institutions and has proposed for comment amendments to update and clarify its advertising rules and is working toward a Policy Statement that will address disclosures by member banks. As both of these efforts would be limited to member banks, the Board is consulting with the other regulatory agencies in an effort to obtain a uniform application of these concepts to all depository institutions. While we are not seeking legislation, if Congress believes that legislation is necessary to achieve uniformity among the agencies, the Board believes that the legislation should provide a more flexible statutory mandate. This would permit the Board to structure rules that would enhance customer benefits as new types of deposits evolve while minimizing customer confusion and the burden on depository institutions.

STATEMENT ON

"DEPOSITORY INSTITUTION EXAMINATION
IMPROVEMENT ACT OF 1986" and
H.R. 2282, the "TRUTH IN SAVINGS ACT"

PRESENTED TO

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE
of the
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
HOUSE OF REPRESENTATIVES

BY

L. WILLIAM SEIDMAN
CHAIRMAN
FEDERAL DEPOSIT INSURANCE CORPORATION

2128 Rayburn House Office Building
June 4, 1986
10:00 a.m.

Mr. Chairman,

I appreciate this opportunity to present the FDIC's views on the revised Depository Institution Examination Improvement Act of 1986 -- the Carper-Lundine Bill -- and on H.R. 2282, the Truth in Savings Act. I will deal first with the Carper-Lundine proposal and then turn to H.R. 2282.

I. Carper-Lundine Bill

I thank you, Mr. Chairman, for holding prompt hearings on this important proposal. We appreciate the support expressed by the many co-sponsors of the Bill and the extensive work that went into the current proposal. We strongly support this legislative initiative.

A. Section 2: Personnel Provisions

First, let me deal with the personnel provisions of the Carper-Lundine proposal. The Bill would give us real flexibility to hire employees, set benefits, and establish our own retirement system. The Depository Institutions Examination Council would conduct a survey of financial industry salaries and make advisory pay recommendations that we would study in setting compensation. We welcome these extremely helpful provisions and believe they will give us the tools to continue to improve our supervisory efforts.

The Bill also proposes that in establishing our own new retirement system, we transfer accrued employee and employer contributions into the system. We approve of this proposal, but we believe the Bill also should be clarified to ensure that existing employees' benefits are fully protected and that our employees be given the option to elect which systems to join. This has normally been done when agencies such as the Federal National Mortgage Association are transferred out of the Federal system. In the short time we have had to examine this latest draft, it has not been possible to fully research the retirement area. We will continue our study and we will be happy to work with you in developing any required perfecting amendments.

B. Section 3: Gramm-Rudman-Hollings and Antideficiency Act Provisions

Section 3 of the Bill would exempt the FDIC and the other Federal banking agencies from budget reductions under the Gramm-Rudman-Hollings Act (GRH) and apportionment under the Antideficiency Act. We strongly support these provisions. They would reaffirm the FDIC's historic independent status and ensure that our agency remained subject to control by Congress -- not by the Office of Management and Budget. We have long operated at a substantial annual surplus under our independent status and this is a desirable result not always achieved in government. No one has shown the need for change. With record numbers of banks failing and on the problem list, this is no time to suggest fundamental changes in the operation of the bank regulators.

On several previous occasions OMB has attempted to assert control over our budget, but it has been repeatedly rebuffed by Congress. Now OMB is raising for the first time the novel claim that a 36 year-old law -- the 1950 Antideficiency Act -- authorizes it to apportion our budget. We are convinced that this claim is without legal merit. Nevertheless, if OMB is allowed to go forward, Congress would lose control of our budget. Control of budget detail inevitably permits policy control, and this apparently is the goal of OMB. Thus supervision of the FDIC's operations would effectively pass from Congress to OMB. Budget apportionment requirements could prevent us from responding flexibly to banking sector problems as they arose.

OMB claims as well that GRH is applicable to the "administrative expenses" of the FDIC. This conclusion ignores the fact that insurance assessments from insured banks and investment income are the FDIC's exclusive sources of funds -- and that any reduction in our expenditures will have no real effect on federal expenditure levels.[1] Sixty percent of savings must be rebated to the banks as a reduction of insurance premiums and the rest is placed in trust to meet insurance obligations. OMB's conclusion also ignores legislative history. Senator Packwood, Chairman of the Senate Finance Committee and head of the GRH Senate conferees, stated that "(w)e also exempted numerous other programs on which there was no argument, such as the Federal Deposit Insurance Corporation."[2]

We have been asked to testify before the House Banking Committee's Subcommittee on Oversight on what the potential impact on our operations would be if future GRH reductions were to be implemented. Our testimony will explain that implementation of those reductions would severely impact our supervisory efforts, substantially raise our liquidation costs, and could shake the stability of our financial system. Those changes would result in undermining our statutory responsibility to promote the safety and soundness of the banking system.

Let me furnish some specifics. Absent relief from the rigid requirements of GRH, the FDIC would be unable to fulfill its statutory mission of supervising insured banks in an adequate manner. We anticipate that as a minimum:

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[1] The fact that OMB uses the annual change in the FDIC's unobligated balances (cash flows) as a line item to reduce the overall deficit is an accounting artifact that has no practical significance. Moreover, as a matter of law, FDIC funds are not available for use by other government agencies -- and the FDIC does not use other government revenues to fund its operations.

[2] 131 Cong. Rec. S. 14782 (Dec. 11, 1985).

(1) the supervision of non-problem and, to a considerable extent, problem banks would be sharply reduced; (2) the Division of Bank Supervision's staff of experienced field and supervisory personnel available to address problem bank situations would continue to decline; (3) training of FDIC employees would be greatly curtailed, with an accompanying decline in effectiveness; (4) the temporary assistance routinely supplied by our examiner staff to support deposit payoff and liquidation activities would cease; (5) planning and computerized support efforts and projects known to be needed would have to be delayed or cancelled; and (6) FDIC-subsidized training of State examiners would be sharply cut back.

C. Section 4: Consolidation of Federal Examiner Training

Section 4 of the Bill would establish a Congressional policy for the consolidation of Federal examiner training. The Depository Institutions Examination Council would develop a proposal to implement this policy. We understand the objective of consolidated training, and would note that at present almost all training programs applicable to all the agencies are consolidated within the FFIEC.

We would only add that each regulator will continue to need some flexibility in structuring its training programs because of the diverse nature of the institutions we supervise. We are eager to improve our cooperative efforts and work on a plan to reduce costs and enhance the quality of training.

D. Section 6: Minimum Requirements for State Examinations

The improvement in the quality of state examiners and their respective departments is a policy which the FDIC has always supported. In fact, we played an important role in this area by making available our training facilities to state examination personnel and offering other support services, such as access to the FDIC's data base. We support the thrust of Section 6, but we have some thoughts about how to integrate it with present operations. The FDIC has some form of divided examination program with 32 state banking departments wherein we alternate exams of satisfactory institutions. The agreements take into consideration the differences among state departments and provide a great deal of flexibility for either agency to examine independently any institution it desires. This does involve some judgments about the quality of the state examinations, which are made on a case-by-case basis. Having a Federal entity make formal judgments in this area could strain the good cooperative relationships enjoyed by Federal and state regulators. We must protect against any harm to the present system, while furthering minimum requirements for state examinations.

We would also note that the Conference of State Bank Supervisors has been working to improve the quality of State Examinations and has recently introduced its own accreditation program, which we applaud.

II. Truth in Savings Act

Mr. Chairman, you asked that we also comment on H.R. 2282, the Truth in Savings Act.

The public is currently faced with a plethora of advertised interest rates, and annual yields that are most difficult to understand. They come not just from depository institutions, but from securities firms and other intermediaries not addressed by H.R. 2282. Deregulation of interest rates has been a great boon to consumers, but it has brought confusion. We believe strongly in "truth in savings"; the question is whether Truth in Savings legislation is needed or whether initiatives already underway will provide needed information to the consumer.

Our doubts about the need to legislate at the present time are as follows:

1. Regulators have the authority to issue regulations regarding advertising of rates and are currently working on uniform regulations to govern their advertising.

2. The industry has itself recognized the problem and, under the auspices of the American Bankers Association, it is engaged in a voluntary compliance program to establish advertising standards.

3. By spotlighting misleading advertisements, consumer groups, depository institutions, and the media have been able to counteract many deceptive interest rate claims.

4. The procedures set forth in H.R. 2282 are very similar to those set forth in the Truth in Lending Act. That Act has imposed significant costs on industry, which in turn have been passed on to consumers. Before exposing the industry to costs of this nature, we first would like to see if existing problems can be effectively dealt with through regulation and voluntary action.

III. Conclusion

In summary, we believe the Carper-Lundine Bill is a major step in the right direction for bank regulation, and we support it strongly. We believe truth in savings is necessary, but it may be premature to legislate in this area.

Mr. Chairman, that concludes my testimony. I would be pleased to answer your questions.

U.S. Department of Justice
Office of Legal Counsel

Office of the
Deputy Assistant Attorney General

Washington, D.C. 20530

10 1986

MEMORANDUM TO JOHN H. CARLEY
General Counsel
Office of Management and Budget

Re: Applicability of the Apportionment Requirements of the Antideficiency Act to the Nonadministrative Funds of the Federal Deposit Insurance Corporation

The opinion request of January 31, 1985, from Michael J. Horowitz, former Counsel to the Director of Management and Budget, raised the issue whether the nonadministrative funds of the Federal Deposit Insurance Corporation ("FDIC") are subject to the apportionment requirements of the Antideficiency Act ("the Act"), as revised, codified and enacted in Pub. L. No. 97-258, 96 Stat. 877, 928-32, 31 U.S.C. 1511-1519. We conclude that the funds are subject to apportionment by the Office of Management and Budget, essentially for the same reasons that our opinion of February 18, 1983, concluded that the nonadministrative funds of the Federal Savings and Loans Insurance Corporation ("FSLIC") were subject to the apportionment requirements of the Act and for the additional reason that the legislative history of the 1950 Amendments to the Antideficiency Act conclusively demonstrates that Congress intended that the FDIC be covered by the requirements.

A. OLC Opinion of February 18, 1983

In the Memorandum to Michael J. Horowitz, Counsel to the Director of the Office of Management and Budget from Ralph W. Tarr, Deputy Assistant Attorney General, Office of Legal Counsel (February 18, 1983) [hereinafter "Mem."], this Office concluded that the apportionment requirements of the Antideficiency Act apply to the nonadministrative funds of the FSLIC.[1] We observed that apportionment requirements apply to all appropriations and funds of government agencies with three narrow exceptions. See 31 U.S.C. 1511.[2] The opinion noted that prior to 1950, the Antideficiency Act did not subject indefinite or permanent appropriations, including the nonadministrative funds of government corporations, to apportionment. See Mem. at 10. We maintained that the 1950 Amendments to Act, however, were specifically designed to enlarge the types of funds subject to apportionment to include not only Congress' annual appropriations but all appropriations or funds of government agencies, even if the spending of such appropriations or funds were not limited to a definite period of time. Id. We observed further that the 1950 Amendments also specifically included "any corporation wholly or partly owned by the United States which is an instrumentality of the United States" in its definition of the agencies whose funds were to be apportioned by the Bureau of the Budget. Act of Sept. 6, 1950, 1. 896, 64 Stat. 766 (codified at 31 U.S.C. 665(d)(2)

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[1] A copy of this opinion is attached.

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[2] The statutory apportionment requirements do not apply to three narrow categories:

(1) funds for price support and surplus removal of agricultural commodities, including funds (under 7 U.S.C. 612(c)) to encourage exportation and domestic consumption of agricultural products;

(2) corporations getting amounts to make loans (except paid in capital amounts) without legal liability on the part of the United States Government; and

(3) the Senate, the House of Representatives, a committee of Congress, or an officer or employee of either House.

See 31 U.S.C. 1511(b).

(1976)).[3] The opinion emphasized that the legislative history of the 1950 Antideficiency Act Amendments supported the conclusion that an essential objective of the 1950 revisions was to subject funds of government corporations to apportionment. Mem. at 13-16.

The FSLIC argued that a provision in its enabling statute exempted it from complying with other laws governing the expenditure of public funds.[4] Nevertheless, we opined that both the plain language and legislative history of the 1950 Amendments to the Antideficiency Act demonstrated so clear an intent to apply the apportionment requirement to all government corporations that the general language in the FSLIC's prior enabling statute was not controlling. The opinion also specifically concluded that the FSLIC did not fall within the exemption from the Antideficiency Act created for corporations that obtain funds for making loans without incurring legal liability on the part of the United States. Mem. at 13.

We cannot discern any distinction between the FSLIC and FDIC that would justify the conclusion that the apportionment requirements of the Act apply to former but not the latter. Both the

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[3] The 1982 recodification of Title 31, which was intended to enact technical revisions without making substantive changes, deletes this definition of agency. See Pub. L. No. 97-288, 96 Stat. 877. In its place, the general definitions included in Title 31 provide that an agency "means a department, agency, or instrumentality of the United States Government," 31 U.S.C. 101, and executive agency "means a department, agency, or instrumentality in the executive branch of the United States Government." 31 U.S.C. 102. Since the FSLIC does not belong to the legislative or judicial branches, we maintained the FDIC must be an executive agency under the present definition of agency. Mem. at 11 n.11. Similarly, the FDIC is an executive agency under the language of the present definition. For further discussion of whether the FDIC is an agency, see pp. 5-7, infra.

In the 1982 codification, the word "President" is substituted for "Director of the Office of Management and Budget," "Office of Management and Budget," and "Director" because sections 101 and 102(a) of Reorganization Plan No. 2 of 1970 (eff. July 1, 1970, 84 Stat. 2085) designated the Bureau of the Budget as the Office of Management and Budget and transferred all functions of the Bureau to the President. See H.R. Rep. No. 651, 97th Cong., 2d Sess. 75 (1982).

[4] This provision authorized the FSLIC to "determine its necessary expenditures under this chapter and the manner in which the same shall be incurred, allowed, and paid, without regard to the provisions of any other law governing the expenditure of public funds." 12 U.S.C. 1725(c)(5).

FSLIC and FDIC are government corporations established to protect individual savings accounts and to strengthen public confidence in depository institutions. Compare S. Rep. 438, 74th Cong., 1st Sess. 2 (1935) (stating that creation of the FSLIC was designed to "stimulate the confidence of the public in home-financing institutions") with 77 Cong. Rec. 3728 (1933) (remarks of Sen. Glass) (arguing that the creation of the FDIC would prevent panic withdrawals from banks).[5] Both have authority to borrow from the United States Treasury in order to fulfill their obligations to insured institutions. Compare 12 U.S.C. 1725(i) (1982) (authorizing the FSLIC to borrow up to $750,000,000 from the Treasury) with 12 U.S.C. 1824 (authorizing the FDIC to borrow up to $3,000,000,000 from the Treasury).[6] In light of these pervasive similarities, there is no reason in law or logic not to follow the reasoning of our former opinion and apply the apportionment requirements to the FDIC.[7]

B. The Legislative History

Even were our former opinion not controlling, we would be constrained by the legislative history of the 1950 Antideficiency Act Amendments to conclude that the FDIC is subject to the apportionment requirements of the Antideficiency Act. During the course of the debate on the floor, Representative Norrell, a sponsor of the Amendments and manager of the floor debate, explained the reason for the Antideficiency Act Amendments, 96 Cong. Rec. 6725 (1950) (remarks of Rep. Norrell):

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[5] Both also have similar powers to obtain assets for their insurance fund, compare 12 U.S.C. 1727 (1982) (authorizing the FSLIC to assess insured savings institutions) with 12 U.S.C. 1817 (authorizing the FDIC to assess insured banks), and to prevent the default of insured institutions and to restructure these institutions. Compare 12 U.S.C. 1729(f), 1730a(m) (allowing the FSLIC to make loans and acquire and merge savings institutions in order to prevent default) with 1823(c), 1823(f) (allowing the FDIC to make loans, and acquire and merge banks in order to prevent defaults).

[6] The obligations to depositors in insured institutions are similar. Compare 12 U.S.C. 1724, 1726 (imposing duty on FSLIC to insure depositors in insured institutions to the limit of $100,000) with 12 U.S.C. 1821 (requiring FDIC to insure depositors in insured institutions to the limit of $100,000).

[7] One difference between the FDIC and FSLIC is that the FDIC is a "mixed-ownership Government corporation" while the FSLIC is a "wholly-owned Government corporation" under the definitions of 31 U.S.C. 9101. For a discussion of whether this difference constitutes a distinction for the purposes of apportionment requirements, see pp. 5-7, *infra*.

> For years and years we have been creating corporations, giving them power to incur indebtedness on behalf of the Government and authorizing the Treasury Department to transfer money to them . . . . The idea is that the Bureau of the Budget and the Congress at the beginning of each year should have a look at the total indebtedness to be created during ensuing fiscal year [sic] by these independent corporations, so that we can weigh that with the indebtedness we create by virtue of our appropriation bills for such fiscal year.

It is well settled that "explanatory statements in the nature of a supplemental report" made by a sponsor of a bill on the floor of a legislative body are compelling evidence of legislative intent. *Duplex Printing Press Co.* v. *Deering*, 254 U.S. 443, 475 (1921). See also *Lugar* v. *Edmonson Oil Co.*, 457 U.S. 922, 934 (1982) (using statements of manager of bill to establish legislative intent); *United States* v. *Welden*, 377 U.S. 95, 105 (1964) (same). J. Landis, *A Note on "Statutory Interpretation"*, 43 Harv. L. Rev. 886, 888-89 (1930) (stating that "through. . . the explanation of the chairman [a legislator's vote] becomes in reality a concurrence in the expressed views of another.")

C. *Arguments Advanced by the FDIC Against Application of the Apportionment Requirements*

In light of both our prior opinion and the conclusive legislative history indicating Congress's intent to subject the FDIC to the apportionment requirements of the Antideficiency Act, the arguments advanced by the FDIC seeking to exclude itself from the apportionment requirements are unpersuasive. The FDIC observes that it, unlike the FSLIC, is defined as a "mixed-ownership government corporation." Compare 31 U.S.C. 9101(3)(E) (defining the FSLIC as wholly owned government corporation) with 31 U.S.C. 9101(2)(C) (defining the FDIC as mixed-ownership government corporation).[8] The FDIC argues that because mixed-ownership government corporations are not specifically included in the definition of an agency contained in the 1950 Antideficiency Act Amendments, the FDIC is not covered by the Act. Memorandum on the Applicability of the Apportionment Provisions of the Antideficiency Act to the FDIC (July 11, 1985) [herinafter "FDIC Mem."] at 11-13.

When the Antideficiency Act was amended to encompass Government corporations, the definition of agency read, 31 U.S.C. (1976) 665(d)(2) (emphasis added)[9]:

> When used in the section, the term "agency" means any executive Department, agency, commission, authority, administration, board, or other independent establishment in the executive branch of the Government, *including any corporation wholly or partly owned by the United States which is an instrumentality of the United States* . . . .

At the time of the passage of the 1950 Antideficiency Act Amendments, the Government Corporation Control Act divided Government corporations into two categories: wholly owned corporations and mixed-ownership corporations. See 31 U.S.C. (1976) 846, 856. Because the terms "corporation partly owned by the United States" and "mixed-ownership Government corporation" have essentially the same connotation, it seems logical to infer that the inclusion of the term "corporation partly owned by the United States" in the definition of agency in the 1950 Antideficiency Act Amendments was intended to include corporations defined as "mixed-ownership" by the Government Corporation Control Act.

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[8] The FDIC'S status as a mixed-ownership corporation is essentially a legal fiction: at present neither the government nor any other entity holds any equity in the FDIC. Although the FDIC was established in 1933 in corporate form with capital stock purchased by the United States Treasury and Federal Reserve Banks, by 1978 the FDIC had repaid the Treasury and the Federal Reserve Banks' subscriptions in full. FDIC Mem. at 4. We do not believe, however, that the FDIC's actual capitalization is relevant to whether it is covered by the apportionment requirements of the Antideficiency Act. As a matter of law the FDIC remains a mixed-ownership government corporation. Moreover, the FDIC's structure is today no different from what it was when the FDIC was specifically included as one of the government corporations covered by the 1958 Amendments to the Antideficiency Act. See pp. 4-5, *supra*. Finally, even if the United States does not own the FDIC, the FDIC may still potentially create liability for the United States Treasury through its authority to borrow funds. See pp. 7-8, *infra*.

[9] This definition of agency was deleted in the 1982 Amendments to the Act. See, *supra*, note 3. The FDIC contends (and we agree) that it is entitled to rely on the prior definition, because the 1982 Amendments were intended to be nonsubstantive. See H. Rep. No. 97-651, 97th Cong. 2d Sess. 1 (1982).

The FDIC argues, to the contrary, that "mixed-ownership Government corporation" is a term of art and that because Congress did not include the term in its definition of agency, Congress meant to exclude mixed-ownership corporations from the ambit of the Antideficiency Act. FDIC Mem. at 12. The difficulty with this interpretation is that it renders ineffective the clause "corporation partly owned by the United States," because no government corporation is defined in the Government Corporation Control Act or, to our knowledge, elsewhere as "partly owned by the United States." Because it is an elementary rule of statutory construction that effect must be given, if possible, to every word or clause of a statute (see United States v. Menasche, 348 U.S. 528, 538 (1959)), the better view is that the term "corporations partly owned by the United States" applies to corporations defined as "mixed-ownership Government corporations" under the Government Corporation Control Act.

The FDIC's other argument against the application of the apportionment requirements of the Antideficiency Act is that the FDIC is exempted from the Act by 31 U.S.C. 1511(b)(2), which provides:

> This subchapter does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability on the part of the United States Government.

The FDIC argues that it is covered by the clause because its insurance activities often involve making loans to distressed institutions and because it funds these activities from assessments imposed on insured banks and therefore does not create liabilities against the United States. FDIC Mem. at 13-16.

This argument does not successfully distinguish the FDIC's position from that of the FSLIC, which also funds its activities by assessments imposed upon insured institutions. Moreover, both the FDIC and the FSLIC have the contingent authority to borrow substantial amounts from the Treasury. Compare 12 U.S.C. 1725(i) with 12 U.S.C. 1824. The legislative history of the 1950 Amendments clearly indicates Congress's intention to apply the apportionment requirements to corporations that have contingent borrowing authority from the Treasury. The sponsor of the Amendments was concerned about corporations that could potentially create liability by obtaining funds from the Treasury, as well as corporations that received direct appropriations. See 96 Cong. Rec. 6725 (1950) (remarks of Rep. Norrell) (emphasis added) ("For years and years we have been creating corporations, giving them *power* to incur indebtness on behalf of the Government and *authorizing* the Treasury to transfer money to them").[10] Our opinion of February 18, 1983, therefore specifically concluded that the FSLIC was not entitled to an exemption. Moreover, the FDIC's eligibility for the exemption is foreclosed by specific legislative history in the 1950 Antideficiency Act Amendments: when Rep. Norrell listed the FDIC as one of the corporations which would be covered by the Amendments, he specifically alluded to $3 billion which the FDIC possessed and still possesses as a standby line of credit from the Treasury. 96 Cong. Rec. 6725 (1950) (remarks of Rep. Norrell).[11]

D. *Exercise of Apportionment Authority*

In our opinion of February 18, 1983, we expressed no formal opinion on how OMB was to exercise its apportionment authority over the FSLIC. Mem. at 21. We noted, however, that legislative history of the 1950 amendments made clear that "Congress, in subjecting corporations to budgetary supervision, did not intend to alter the duties and obligations of those corporations as set forth in their enabling acts." Id. We therefore suggested that the FSLIC's statutory powers to prevent default and its statutory obligation to make payment on each insured account in the event of an insured institution's default be weighed appropriately in the apportionment process. Id. We believe that the FDIC's similar statutory powers and obligations should also be weighed in the apportionment process.[12]

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[10] Another Congressman stated 96 Cong. Rec. 6728 (1950) (remarks of Rep. Keefe) (emphasis added):

> [W]hat is sought to be accomplished by one provision of this rule is to give the Committee on Appropriations and the Congress the opportunity to look at the operation of these Government corporations that *do not operate on direct appropriations*, but which are given the authority to transfer their bonds directly to the Treasury and thus *secure the money to carry on their operation without any look or supervision so far as the Congress is concerned at the expenditure of those funds*[.]

[11] The FDIC also suggests that the apportionment requirements should not apply because it is an "independent regulatory agency." The FDIC stresses that the legislative history of the Federal Deposit Insurance Corporation contains many expressions of congressional intent that the FDIC be financially independent. However, such general expressions of legislative intent cannot be deemed controlling in light of plain language of the subsequent 1950 Antideficiency Act Amendments and the specific legislative history that indicates an intent to apply the apportionment requirements to the FDIC.

CONCLUSION

Accordingly, we conclude that OMB, acting on behalf of the President, has the authority to apportion the nonadministrative funds of the FDIC. We express no opinion on how that authority should be exercised.

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Deputy Assistant Attorney General
Office of Legal Counsel

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[12] Our opinion also did not undertake to answer whether expenses incurred by the FSLIC pursuant to statutory authority to overt the default of an insured institution would constitute "an emergency involving . . . the protection of property, or the immediate welfare of individuals . . ." 31 U.S.C. 1515(b)(1)(B) or whether the FSLIC's insurance assessments qualify as a "trust or working fund" which may be exempted from apportionment. See 31 U.S.C. 1516. We also pretermit the similar questions with respect to the FDIC.

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APPLICABILITY OF THE ANTIDEFICIENCY ACT OF 1950 TO THE FEDERAL DEPOSIT INSURANCE CORPORATION

This memorandum discusses the applicability of the apportionment requirements of the Antideficiency Act of 1950 ("Antideficiency Act"), 31 U.S.C. §§ 1511-1519, to funds of the Federal Deposit Insurance Corporation ("FDIC"). By memorandum dated January 10, 1986, the Office of Legal Counsel ("OLC") of the Department of Justice concluded that the apportionment requirements may be applied to the nonadministrative expenses of the FDIC. The OLC memorandum does not address whether the administrative expenses of the FDIC are also subject to apportionment. The OLC memorandum was in response to a January 31, 1985 letter from the General Counsel of the Office of Management and Budget ("OMB") requesting OLC's views on whether "the apportionment provisions of the Antideficiency Act" apply to "the nonadministrative funds of the FDIC."[1]

Summary of Conclusions

In our judgment, the apportionment provisions of the Antideficiency Act do not apply to the FDIC for two independent reasons. First, the FDIC is not covered by the Antideficiency Act because it is a nonappropriated government corporation outside the executive branch. Second, Congress has directly addressed the question of whether the FDIC should be subject to executive branch budget supervision and, after comprehensive study, repeatedly refused to alter the 53-year history of FDIC independence.

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[1] It should be noted that even the OLC opinion--which the FDIC believes is in error--would not allow OMB to apportion any administrative funds of the FDIC. The OLC opinion applies by its terms to nonadministrative funds of the FDIC, and thus does not support any apportionment of any FDIC administrative funds.

When Congress created the FDIC, it provided for the funding of all FDIC expenses through statutory assessments upon all FDIC-insured banks. This system provided a means for insured banks mutually to guarantee the deposits of each other. See H.R. Rep. No. 150, 73d Cong., 1st Sess., 5 (1933). Congress did not provide for the FDIC to receive appropriated funds. 12 U.S.C. § 1817. Thus, since its creation in 1933, the FDIC has not been subject to the usual executive branch appropriations review process applicable to most governmental entities. If OMB were to implement OLC's conclusion, the budget process of a government corporation which Congress established as independent would become subject to potential executive branch interference.

Although OMB and its predecessor agencies have frequently recommended that Congress expand the role of OMB over the FDIC, OMB has never previously asserted authority by means of the Antideficiency Act. In order to reach the conclusion sought by OMB, OLC's conclusion is based upon a re-interpretation of a little-noted 1950 amendment to the Antideficiency Act. The OLC re-interpretation is not supported by the Act's language or its legislative history, or a comparison of FDIC with the Federal Savings and Loan Insurance Corporation ("FSLIC"). It is inconsistent with a variety of statutes and other later expressions of congressional intent, and it ignores the thirty-six years of experience that Congress and the executive branch have had in interpreting the amendment.[1]

The Antideficiency Act of 1950 Does Not Address the Budget Process of FDIC

The antideficiency provisions are contained in Chapter 15 of Title 31 of the U.S. Code. This chapter, entitled "Appropriations Accounting," is essentially inapplicable to the FDIC and other governmental entities that obtain operating funds through deposit assessments or trust-type funds and do not receive legislative appropriations.[2] The Antideficiency Act is directed at requiring appropriated agencies to apportion their spending and obligations throughout the fiscal year "to prevent obligation or expenditure at a rate that would indicate a necessity for a deficiency or supplemental appropriation for the period." 31 U.S.C. § 1512(a). It provides discipline for government officials of appropriated entities in the executive branch who obligate the United States without regard to apportionment guidelines. 31 U.S.C. §§ 1517-1519. It is not the principal statute governing the budget process of any governmental entity.

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[1] The executive branch has always previously acknowledged that it does not have any authority over the budget of the FDIC. A recent OMB Circular No. A-11, § 11.1 (July 1985), for example, explicitly states that "the general policies, justification requirements, and instructions on additional data and hearings are not applicable to the budgets not subject to executive branch review. These include the legislative branch, the judiciary, the Federal Deposit Insurance Corporation...." (emphasis added)

[2] FDIC assessments establish a trust fund in part to provide a means for payment of depositors of failed insured banks. Trust-type funds of the FDIC are not subjects of appropriations or apportionment. 31 U.S.C. §§ 1321(b), 1516. See also S. Rep. No. 1195, 73d Cong., 2d Sess. (1933).

The Government Corporation Control Act Establishes the Budget Process of Government Corporations

It is the comprehensive Government Corporation Control Act of 1945 ("GCCA") that establishes the degree of executive branch supervision over the budgets of government corporations. 31 U.S.C. 9101. Under GCCA, government corporations are divided into two categories: "wholly owned" and "mixed-ownership." The labels are not necessarily descriptive of the actual nature of ownership. Rather than providing standard definitions or criteria, the law simply enumerates the corporations included in each group. The FDIC is placed in the "mixed-ownership" group despite the fact that it does not now have any private ownership.[4] FSLIC, although it has many characteristics in common with the FDIC, is classified as "wholly owned".[5]

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[4] The FDIC was created as a stock corporation and some of its stock was originally held by Federal Reserve banks and some by the United States Government. When the last of the FDIC's stock was retired in 1948, pursuant to law, the FDIC ceased to be owned in the usual sense of ownership. See Section 4 of the Act of August 5, 1947, Pub. L. No. 363, 61 Stat. 773.

[5] Other "mixed-ownership" banking corporations, including the Regional Banks for Cooperatives, Federal Intermediate Credit Banks, and Federal Land Banks, are essentially privately owned. Their boards of directors represent primarily the private sector, and their capital stock is owned by private members or private associations. The U.S. Railway Association, which is primarily federal, is also classified as "mixed-ownership." See Comptroller General, Report to Congress: Congress Should Consider Revising Basic Corporate Control Laws, 11, 12 (1983).

The GCCA categorization is significant, however, in one important respect. Only "wholly owned" corporations are required to submit annual budgets for executive branch review. 31 U.S.C. § 9103. "Mixed-ownership" corporations, on the other hand, are not required to submit to executive branch budget oversight. To the contrary, Section 10(a) of the Federal Deposit Insurance Act ("FDI Act") gives the Board of Directors of the FDIC independent authority to "determine and prescribe the manner in which its obligations are incurred and its expenses allowed and paid." 12 U.S.C. § 1820(a).[1]

Independent budget authority enjoyed by "mixed-ownership" corporations has received repeated consideration over the years. OMB and its predecessor agencies have long advocated subjecting all government entities including the FDIC to the full range of budget controls, including executive budget supervision. Congress has reviewed this matter on a number of occasions, both in hearings and congressional reports. The attached appendix lists proposals which, if approved, would have accomplished greater executive branch supervision of the FDIC's budget. Yet Congress has refused to alter the existing independent process and subject the FDIC to executive budget control. It has explicitly refused to place the FDIC in the "wholly owned" category of the GCCA which would subject the FDIC to executive branch budget review.[1]

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[1] The Federal Deposit Insurance Act was reenacted on September 21, 1950, two weeks after enactment of the 1950 amendments to the Antideficiency Act. Before then, the FDI Act was a part of 1933 amendments to the Federal Reserve Act, 12 U.S.C. § 264 (1940).

As recently as the 1970s, Congress reaffirmed its desire to retain the "mixed-ownership" category as a vehicle to allow certain governmental entities financial independence.[1]

By refusing to amend the GCCA in the face of a number of OMB attempts, Congress has reaffirmed its intention to keep the FDIC free from any executive branch budget oversight. When Congress has refused to enact OMB's express proposals to amend the GCCA, OMB cannot be permitted to achieve budget control indirectly by using the Antideficiency Act.

Neither the Language nor the Legislative History of the Antideficiency Act Supports OMB Apportionment Authority

Contrary to OLC's assertion that the apportionment requirements of the Antideficiency Act apply to all government agencies "with three narrow exceptions," the statute applies only to entities "in the executive branch" and to those receiving legislative appropriations. See 31 U.S.C. § 1513. OLC cites no authority--and indeed there is none--that defines the FDIC as an executive branch agency for any budgetary purpose.[9]

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[1] See Bank Supervision, Bank Directors and Conflicts of Interest: Hearings on S.71 Before the Committee on Banking, Housing, and Urban Affairs, 95th Cong., 2d Sess.,29,32 (1978), (statement of George LeMaistre, Director, FDIC).

[1] In response to the collapse of northeastern railroads, Congress created the U.S. Railway Association ("USRA") to oversee the organization and route selections of Consolidated Rail Corporation ("Conrail"). USRA is government controlled and funded by appropriations. It was purposefully defined as "mixed-ownership" to avoid subjecting it to the budget and other controls applicable to "wholly owned" corporations. Comptroller General, Report to Congress: Congress Should Consider Revising Basic Corporate Control Laws 11 n.1 (1983).

OLC's discussion analogizes the FDIC to the FSLIC. However, unlike the FDIC, the FSLIC is explicitly defined as being in the executive branch. 12 U.S.C. § 1437(b). Its statute distinguishes "nonadministrative expenses" from "administrative expenses"; because the FSLIC is part of the Federal Home Loan Bank Board ("FHLBB"), a ceiling on the FSLIC's administrative expenses is established through the appropriations process. FHLBB's administrative expenses have long been subject to the usual executive oversight of budget submissions pursuant to the GCCA, 31 U.S.C. § 9101, 1904. The 1983 OLC opinion concluded that FSLIC's nonadministrative expenses should also be subject to apportionment. The FDIC's statute, on the other hand, does not distinguish between nonadministrative expenses and administrative expenses.[10]

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[9] For a discussion of the Supreme Court's view of Congress' authority to create independent government corporations, see Keifer & Keifer v. Reconstruction Finance Corporation, 306 U.S. 516, 518 (1939).

[10] A more apt analogy for budgetary purposes is between the FDIC and the Federal Reserve Board. Members of Congress have made this comparison in describing the FDIC's budgetary independence. Senator Vandenberg, one of the sponsors of the Banking Act of 1933 which created the FDIC, compared the FDIC to the Federal Reserve Board as follows:

> The FDIC is on all fours with the Federal Reserve System with respect to the fiscal structure of the American economy. No one has yet had the temerity

There is no statutory basis for OLC's reliance on "logic" to characterize the FDIC as "partly owned by the United States" and therefore covered by the Antideficiency Act. The FDIC is controlled by the United States through the presidential appointment process, but is not legally "owned" in the usual sense of that term since the FDIC's capital stock was retired by an Act of Congress in 1948. Even assuming _arguendo_ that the FDIC were "partly owned by the United States," it would still not be subject to executive apportionment because, as noted above, it is not "in the executive branch."

Moreover, even if the FDIC were within the executive branch, the FDIC is excluded from the apportionment process because it is a corporation which, among other activities, makes loans without legal liability on the part of the United States. _See_ Garn-St Germain Depository Institutions Act of 1982, codified at 12 U.S.C. § 1823(c)(1). Such entities are specifically exempted from apportionment requirements. 31 U.S.C. § 1511(b)(2).

Footnote 10 continued

> to propose that the Federal Reserve System should be robbed of its independence and subordinated to a political bureau of the Government. Yet here is an institution which is even more sensitive with respect to the necessities for its independence and we confront a conference report which for the first time proposes to make it possible for political controls to determine what happens.

93 Cong. Rec. 10123 (1949).

Senator Vandenberg's views were shared by a majority of Congress. The FDIC's budget independence was not changed in response to the referenced conference report proposal.

Similarly, the OLC conclusion is not supported by "legislative history". When Congress passed the Antideficiency Act of 1950, there were brief hearings held but no reports issued. The Act was passed as an amendment to an appropriations bill.[11] The "legislative history" cited consists of random comments by two legislators. Those comments are interspersed with comments by others on totally unrelated matters, including the alleged risk posed by communists and homosexuals in the State Department. Contrary to the OLC conclusion, it was not Congress' intent to alter the relationship between the executive and congressionally authorized independent agencies, since that issue was not even debated.[12]

Congressman Norrell, whose comments are highlighted by OLC, was apparently chiefly concerned about two matters: first, the sometimes irresponsible unapportioned spending by appropriated governmental entities; and second, the risk of government corporations obligating the federal government through their authorized but unapportioned borrowings from the U.S. Treasury. Nothing in his comments could be stretched to conclude that OMB should be authorized to apportion the FDIC's expenses. At most his comments could be interpreted as an expression of belief that FDIC should be required to apportion its use of its authority to borrow from the U.S. Treasury pursuant to 12 U.S.C. § 1824.[11]

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[11] General Appropriations Act, Pub. L. No. 81-759, § 1211, 64 Stat. 595, 765-767 (1951).

[12] Congress considered and rejected proposals which would have subjected FDIC to greater budget oversight in 1947, 1949, 1950, 1958, 1960 and 1978. See attached appendix.

Congressman Keefe's comments, the only other "legislative history" cited by OLC, are particularly inapposite. He was concerned solely about the lack of congressional budget oversight of corporations. His comments do not support executive apportionment oversight.

This scant "legislative history" is far less persuasive evidence of congressional intent than subsequent congressional rejection of explicit proposals to subject FDIC to executive budget oversight. See attached Appendix.

The 1950 Amendments to the Budget and Accounting Act Support the Conclusion That FDIC Funds Are Not "Appropriations" as Used in the Antideficiency Act

The Budget and Accounting Act of 1921 governs the budget process of government agencies not covered by the GCCA or other legislation. Like the Antideficiency Act, it includes the term "funds" as one of the definitions of "appropriations". The legislative history of the 1950 Amendments to the Budget and Accounting Act resolves any question about whether the FDIC's assessments and income are such "funds." The Conference Report states:

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[11] With regard to the FDIC, Congressman Morrell specified $3 billion, the amount the FDIC was then and is now authorized to borrow pursuant to 12 U.S.C. § 1824, as the figure that arguably might be subject to the Antideficiency Act. The FDIC has never used or projected the need to use the $3 billion line of credit. Further, if the FDIC were to draw on that line of credit, such a loan would not create a legal liability on the part of the United States. The obligation would be a debt of the FDIC payable to the U.S. Treasury. The existence of the line of credit does not constitute a present or actual legal liability of the United States. See e.g., 77 Cong. Rec. 3729 (May 19, 1933) (statement of Sen. Glass); 77 Cong. Rec. 3964-3965 (May 22, 1933) (statement of Rep. Ayers); H.R. Rep. No. 150, 73d Cong., 1st Sess. 5 (1933); FDIC v. Stensland, 15 N.W. 2d 8 (S.D. 1944).

> The funds of the Federal Deposit Insurance Corporation are received from assessments on insured banks and are used only for the purposes of deposit insurance. These funds have never been under the Budget and Accounting Act for the reason that they are not Government moneys or appropriations and there was no intention of including such funds.... (emphasis added)

Conf. Rep. No. 3002, 81st Cong., 2d Sess., reprinted in 1950 U.S. Code Cong. Service, 3729, 3730.

OMB Apportionment Authority Is Inconsistent With FDIC Independence

Exercise of apportionment power by OMB is inconsistent with many other congressional actions designed to insulate the FDIC from executive control.[14] For example, in 1974 Congress enacted legislation that prohibits the executive branch from screening the FDIC's (and other financial institution regulators') legislative recommendations, or testimony, or comments on legislation prior to submission to Congress. 12 U.S.C. § 250. The congressional purpose in enacting this section was to "preserve and strengthen the independence of these agencies, which were originally created by

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[14] Our prior memorandum discusses this point in considerable detail at p. 5-10. For convenience, a copy of our earlier memorandum is attached.

Congress to be free of control by the executive branch." "Because Congress delegated its own legislative power to these independent agencies, it is important to prevent executive usurpation of their powers." Independence from the executive branch was necessary if the agencies were to be "effective in their vital role of preserving the integrity of our financial institutions."[11]

When Congress enacted the Garn-St Germain Depository Institutions Act of 1982 to give the FDIC expanded authority, flexibility, and discretion to assist failing institutions, it specified that such assistance decisions be made independently without review by the executive branch. The Act specifies that:

> The Corporation is authorized, in its sole discretion and upon such terms as the Board of Directors may prescribe, to make loans to, to make deposits in, to purchase the assets or securities of, to assume the liabilities of, or to make contributions to, any insured bank *** (Emphasis added).

12 U.S.C. § 1823(c)(1) (1985).

Executive control of the budget process, even so far as apportionment is concerned, poses at least as great a risk to FDIC independence as executive review of legislative recommendations or assistance transactions.

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[11] S. Rep. No. 93-902, 93rd Cong., 2d Sess. 11, reprinted in [1974] U.S. Code Cong. & Ad. News 6129. (Emphasis added).

In Humphrey's Executor v. United States, 295 U.S. 602 (1935), the Supreme Court considered the proper role of the executive branch over congressionally established independent governmental entities. That case held that a commissioner of an independent agency cannot be removed because of his policy viewpoints. Commissioner Humphrey of the Federal Trade Commission was asked to resign by President Franklin D. Roosevelt. The Supreme Court, in ruling the removal of the commissioner unconstitutional, stated that:

> the language of the act, the legislative reports, and the general purposes of the legislation as reflected by the debates, all combine to demonstrate the congressional intent to create a body of experts who shall gain experience by length of service -- a body of experts which shall be independent of executive authority, except in its selection, and free to exercise its judgment without the leave or hindrance of any other official or any department of the government. ... Its duties are performed without executive leave and, in the contemplation of the statute, must be free from executive control.

295 U.S. at 625-626. See also Wiener v. United States, 357 U.S. 349 (1958).

Conclusion

There is no sound legal basis to apply the Antideficiency Act apportionment provisions to the FDIC and inject the executive branch into the budget decisions of the FDIC.

APPENDIX

Partial Chronology of Prior Consideration of Increasing Executive Budget Oversight Over the FDIC

1945	In enacting the comprehensive Government Corporation Control Act, Congress designated the FDIC as "mixed-ownership" and did not include a requirement that FDIC participate in the appropriations process. *See* Government Corporation Control Act: Hearing on S.469 Before the Subcommittee of the Senate Committee on Banking and Currency, 79th Cong., 1st Sess. (1945) (statement of Leo T. Crowley, Chairman, FDIC).
1947	Budget Control Act - The Senate rejected provision to subject the FDIC to the appropriations process by vote of 83 to 1. H.R. 3756, 80th Cong., 1st Sess. (1947). *See Bank Supervision, Bank Directors and Conflicts of Interest: Hearings on S.71 Before the Committee on Banking, Housing, and Urban Affairs*, 95th Cong., 2d Sess. 30 (1978) (statement of George LeMaistre, FDIC Director).
1949	The House of Representatives rejected a proposal to subject the FDIC to the appropriations process. H.R. 4177, 81st Cong., 1st Sess (1949). *See Bank Supervision, Bank Directors and Conflicts of Interest: Hearings on S.71 Before the Committee on Banking, Housing, and Urban Affairs*, 95th Cong., 2d Sess. 31 (1978) (statement of George LeMaistre, FDIC Director).
1950	A House of Representatives Report expressly excluded the FDIC from the appropriations bill because the FDIC's funds, i.e., assessments on insured banks, were not Government moneys and were used only for deposit insurance. H.R. Rep. No. 303 81st Cong. 2d Sess. (1950). *See Bank Supervision, Bank Directors and Conflicts of Interest: Hearings on S.71 Before the Committee on Banking, Housing, and Urban Affairs*, 95th Cong., 2d Sess. 32 (1978) (statement of George LeMaistre, FDIC Director).
1958	Hearings were held on proposal to subject the FDIC to the appropriations process. No action taken. *Amending the Government Corporation Co. Act: Hearings on H.R. 8332 Before a Subcommittee of the Committee on Government Operations*, 85th Cong., 2d Sess. (1958) (statement of Rep. Patman).
1960	Hearings were held on proposal to subject the FDIC to the appropriations process. No action taken. *Making the Federal Deposit Insurance Corporation Subject to Annual Budget Review: Hearings on H.R. 12092 Before a Subcommittee of the Committee on Government Operations*, 86th Cong., 2d Sess. (1960).

1960	A proposal to subject the FDIC to the appropriations process was never reported out of committee. H.R. 12092, 86th Cong., 2d Sess. (1960). *See* *Bank Supervision, Bank Directors and Conflicts of Interest: Hearings on S.71 Before the Committee on Banking, Housing, and Urban Affairs*, 95th Cong., 2d Sess. 32 (1978) (statement of George LeMaistre, FDIC Director).
1961	A proposal to subject the FDIC to the appropriations process was never reported out of committee. H.R. 6810, 87th Cong., 1st Sess. (1961). *See* *Bank Supervision, Bank Directors and Conflicts of Interest: Hearings on S.71 Before the Committee on Banking, Housing, and Urban Affairs*, 95th Cong., 2d Sess. 32 (1978) (statement of George LeMaistre, FDIC Director).
1965	A proposal to subject the FDIC to the appropriations process was never reported out of committee. H.R. 10507, 89th Cong., 2d Sess. (1965). *See* *Bank Supervision, Bank Directors and Conflicts of Interest: Hearings on S.71 Before the Committee on Banking, Housing, and Urban Affairs*, 95th Cong., 2d Sess. 32 (1978) (statement of George LeMaistre, FDIC Director).
1967	Report of the President's Commission on Budget Concepts advocated reforms including subjecting the FDIC to appropriations process. *See*, *The Report of the President's Commission on Budget Concepts*, 30 (1967).
1977	A proposal to subject the FDIC to the appropriations process was the subject of hearings but no action was taken. *Bank Supervision, Bank Directors and Conflicts of Interest: Hearings on S.71 Before the Committee on Banking, Housing, and Urban Affairs*, 95th Cong., 2d Sess. (1978).
1983	Study suggests comprehensive reform of laws governing government corporations including subjecting them to greater budget supervision. No action taken. Comptroller General, Report to Congress: *Congress Should Consider Revising Basic Corporate Control Laws* (1983).

FOR RELEASE UPON DELIVERY
June 4, 1986 10:00 A.M.

STATEMENT OF
ROBERT L. CLARKE
COMPTROLLER OF THE CURRENCY
Before the
FINANCIAL INSTITUTIONS SUPERVISION, REGULATION,
AND INSURANCE SUBCOMMITTEE
of the
COMMITTEE ON BANKING, FINANCE, AND URBAN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
June 4, 1986

Mr. Chairman and members of the Subcommittee, I welcome this opportunity to appear before you to discuss first, proposed legislation concerning bank advertising and disclosure practices intended to improve consumer information; and second, resource constraints facing the Office of the Comptroller of the Currency.

BANK ADVERTISING AND DISCLOSURE

H.R. 2282, the "Truth in Savings" bill, attempts to achieve uniform disclosure of the interest rates and fees associated with interest-bearing deposit accounts offered by depository institutions so that consumers can make more meaningful comparisons among such accounts. The OCC fully supports this goal. We believe, however, that current federal banking agency regulatory initiatives in this area may make "Truth in Savings" legislation unnecessary.

Background

The removal of interest rate ceilings on time and savings accounts, which was completed earlier this year, has resulted in an abundance of creative and innovative new deposit accounts. Consumers have clearly benefited from the greater choice of accounts available to them and the opportunity to earn market rates of interest on their savings deposits. However, the variety of accounts with varying terms and conditions has understandably caused some customer confusion.

Most depository institutions have clearly and accurately explained the various features of their financial products. Nonetheless, it may be difficult for consumers to compare the individual features of similar accounts offered by different depository institutions. For instance, two accounts paying the same simple interest rate may have different yields depending on the frequency of compounding. To the extent that consumers are confused, savings dollars may not flow to the depository institutions offering the best rates and terms. For these reasons, we share your view about the importance of uniform and accurate disclosure in advertising.

Existing Rules on Bank Advertising

The OCC currently has no express rulemaking authority regarding advertising of deposit accounts by national banks.

The Federal Reserve Board prescribes rules governing the advertising of interest-bearing deposits by member banks, including national banks, through its authority under the Federal Reserve Act (12 U.S.C. 371b). The OCC actively enforces national bank compliance with the Federal Reserve Board's implementing rule, Regulation Q. This regulation currently requires that:

- deposit advertising be accurate and not misleading;
- affirmative disclosures in advertising be made regarding the payment of interest, early withdrawal penalties, minimum balance requirements, and minimum periods during which funds must remain on deposit to earn the stated rate of interest;
- interest rates be stated in terms of the annual rate of simple interest; and
- where a percentage yield achieved by compounding interest during one year is advertised, the annual rate of simple interest be stated with equal prominence, together with a reference to the basis of compounding.

The OCC issued Banking Bulletins in 1983 and 1984 to national banks emphasizing the importance of complying with the disclosure requirements of Regulation Q. In the 1983 Bulletin, the OCC expressed its concern that national bank advertising for new ceilingless accounts not be inaccurate or misleading. We reminded banks that we would closely monitor their advertising practices to ensure they conform to Regulation Q requirements.

In the Bulletin that followed in 1984, the OCC emphasized the importance of national banks disclosing current schedules of fees and charges. We asked national banks to review their policies and procedures regarding such disclosure to ensure that customers were receiving accurate and helpful information.

Additionally, in a 1985 Banking Circular that encouraged national banks to consider the provision of basic banking services, the OCC also recommended that national banks provide "plain-English, written disclosure of all fees, services and terms of the basic banking services."

The OCC has also taken the initiative to increase the required disclosure of fees and service charges by proposing an amendment to 12 CFR Part 18. This proposed change, which is currently under consideration by this Office, would require national banks to disclose to depositors, among other things, current schedules of fees and charges and their funds availability policies.

OCC Position

Because of the constantly changing nature of the financial products offered to consumers, we believe that it is important that the regulatory agencies have maximum flexibility to adjust disclosure requirements in response to new industry practices. Rigid statutory requirements, based on today's products, may not serve the consumer when applied to the products of tomorrow. We would, therefore, be very concerned with any statute that mandates specific language and formats for the advertising of deposit accounts or that specifies how products should be designed.

The Federal Reserve Board is currently considering revisions to its Regulation Q to consolidate and simplify the various Board interpretations, policy statements, and staff opinions that were issued over the past few years in response to new savings instruments. The revisions are intended to establish advertising standards that will be flexible enough to deal generally with new and different savings instruments, while not being so cumbersome as to discourage their creation.

The OCC has commented on this proposal and is participating in an interagency working group organized to scrutinize federal advertising and disclosure policy on bank and thrift deposit accounts. We have encouraged the Federal Reserve Board to adopt revisions to its current rule that will enhance the flow of useful information to consumers regarding the terms and conditions on deposit accounts and will guard against the problems associated with excessive and overly complicated advertising disclosure requirements.

Conclusion

The objective of H.R. 2282 is commendable. It is our view, however, that federal bank regulators already possess adequate authority to achieve increased and uniform disclosure in the advertising of interest-bearing deposit accounts and are actively working towards that goal. In fact, federal legislation could be harmful to the extent that it imposes specific disclosure requirements that may prove, over the long term, to be inappropriate, rigid, or overly costly. Bank regulators need the flexibility to respond to the creation of new and innovative savings instruments.

OCC RESOURCE CONSTRAINTS

I would like to devote the remainder of my statement, as the Subcommittee requested, to the OCC's need for additional resources. Our responsibilities continue to grow as conditions in the banking system change. However, it is becoming increasingly difficult for us to meet those responsibilities. One reason for this is the spending restrictions imposed by the

Balanced Budget and Emergency Deficit Control Act of 1985, better known as Gramm-Rudman-Hollings. Another reason is our need to enhance our compensation and career development packages in order to attract and retain an adequate number of experienced and competent bank examiners.

At your request, Mr. Chairman, a letter containing our comments on an amended version of H.R. 3567, which addresses matters related to the resources available to the federal bank regulatory agencies, is being prepared and will be sent to the Subcommittee. Today, rather than discuss the specifics of the proposed legislation, I will present my overall view on the need for the OCC to enhance its supervisory efforts, to retain the flexibility to direct its supervisory efforts to areas of greatest need, and to build up its highly skilled work force.

Challenges Facing Bank Supervisors

The responsibilities and challenges facing bank supervisors have increased steadily in recent years due to a variety of factors.

First, the number of national banks has increased. In 1980, there were 4,400 national banks with assets that totaled $1 trillion. At year-end 1985, there were nearly 5,000 national banks with over $1.6 trillion in assets.

Second, since the 1960s, the financial services sector has undergone tremendous change that has made the banking business more complex and difficult. A system of regulation prescribing the kinds of deposit accounts banks could offer and the interest rates they could pay on those deposits was dismantled in the early 1980s. The competitive pressures facing banks have intensified as a variety of financial services providers are making inroads into banks' traditional lines of business. These changes and the growing complexity and technological sophistication of banking have increased the need for more sophisticated approaches to bank supervision.

Third, volatile economic conditions have buffeted the banking system. Since 1980, there have been back-to-back recessions, severe downturns in the agricultural and oil and gas sectors, a sudden shift from inflation to disinflation, difficulties with some less-developed countries repaying their heavy debts, and a variety of other problems.

Last year, 118 commercial banks failed, the most in any year since the Great Depression. Thirty of the 118 were national banks. At least that many failures are expected in 1986. Through May 30 of this year, 50 commercial banks had failed, of which 21 were national banks.

The pressures on the industry are even more apparent from the number of banks experiencing financial difficulty. In 1980, 257 national banks were receiving special supervisory attention (*i.e.*, had CAMEL ratings of 3, 4, or 5). Since then, the number of national banks requiring special supervisory attention has increased fourfold to over 1,100 banks.

The increased number of national banks, the more complex nature of the business of banking, and the financial difficulties being experienced by national banks have significantly increased the demands on the OCC at a time when our resources have actually declined. Since 1980, the number of full-time equivalent employees at the OCC has declined 10 percent to 2,900. As a result, the OCC has been forced to cut back on the number of annual on-site bank examinations.

To meet these greater supervisory demands with a smaller examining force, the OCC has had to increase its reliance on remote surveillance of bank performance through greater use of computer technology and off-site analysis. The OCC has also had to limit its resource-intensive, on-site examinations to those banks that present the greatest risks to the safety and soundness of the entire banking system. As part of our 1986 supervisory plan, for instance, we decided to forego on-site examinations at 1,200 community national banks that had been identified through off-site analysis as posing the least risk to the banking system.

Despite our best efforts to supervise the national banking system with fewer examiners, the pressures for a larger examination staff continue to mount. The Treasury Department recognizes the need for additional personnel and has requested 150 additional full-time equivalent employees for the OCC in FY 1987. That increase was proposed in the President's 1987 budget and demonstrates the Administration's commitment to addressing the problems discussed above.

Gramm-Rudman-Hollings

The application of Gramm-Rudman-Hollings to the OCC, however, has hindered our plan to expand the ranks of our examiners and has, in fact, resulted in a decline in the size of our examination force. To reduce expenditures in FY 1986 as mandated by Gramm-Rudman-Hollings, the Office first reduced non-personnel related expenditures. Those cuts, however, enabled the OCC to achieve only 60 percent of the mandated reductions.

To make up the difference, the OCC has been forced to implement a hiring freeze. A recent analysis of the staff reductions that will result from our hiring freeze indicates that the number of field examiners is likely to decline by approximately 275 during FY 1986. This constitutes 12 percent of our field examining force. In Washington, the freeze is expected to result in a reduction of 73 employees, or 11 percent of headquarters staff by year-end.

These reductions come on top of the 10 percent decline in staff size we have experienced since 1980. Currently, 26 percent of the positions designated to be filled by commissioned National Bank Examiners (NBEs) are vacant. These positions are necessarily filled internally by individuals who have achieved a demonstrated level of competence through training provided by the OCC. If the freeze is continued and we cannot add new assistant examiners, our ability to staff these commissioned NBE positions in the future will be severely limited. This shortage of commissioned examiners will be most troublesome in the Midwestern and Southwestern Districts where there are the greatest number of problem banks.

As a result of the hiring freeze and budget cuts, approximately 700 community national banks, or 14 percent of the national banking system, may not receive planned on-site supervision in 1986. Of these 700, over 100 had been identified as institutions likely to suffer a financial deterioration. These reductions are in addition to the previously planned elimination of on-site visits at over 1,200 community banks. Although the reductions are being managed in 1986, we fear that the consequences of further cutbacks in 1987 and beyond could cause the OCC's supervisory efforts to be less than prudent.

Recognizing the importance of ensuring that the OCC fulfill its supervisory mission, we would be pleased if the Congress reevaluated the applicability of the automatic reductions of Gramm-Rudman-Hollings to the bank regulatory agencies for FY 1987 and beyond. Let me point out that such legislation would not remove the OCC from its current oversight, both by the Treasury Department, because it is a Treasury bureau, and by the two banking committees of the Congress.

Turnover

An additional, longer term problem is posed by the high rate of examiner turnover at the OCC. Over the past five years we have had an average annual turnover rate which has averaged about 14 percent. This turnover rate has reduced the number of our experienced examiners, and has required that an increasing share of our annual expenditures be devoted to training programs.

The OCC's turnover rate is particularly costly because of the investment we make in our examination staff. Virtually all of our supervisory talent is home-grown. We hire new college graduates, and following approximately five years of both formal and on-the-job training costing more than $30,000 per employee in addition to compensation, qualified employees are commissioned as national bank examiners. Once trained, our examiners have skills that are attractive to banks and to supervisors of other financial institutions.

When one of these examiners leaves the agency, it is difficult to find a comparably skilled replacement. For most supervisory positions, people with the necessary skills are not readily available outside the OCC. OCC recruitment efforts are also hampered because the earnings potential of trainees may be as much as 10 to 30 percent lower at the OCC than at other federal regulatory agencies that oversee financial institutions.

Moreover, our ability to retain experienced personnel has been hampered by an increasingly wider gap between our pay levels and those of the banking industry and the agencies that supervise other financial institutions. Greater flexibility in our compensation program would go far toward reducing examiner turnover and would enhance the attractiveness of a professional career with the OCC.

CONCLUSION

The Gramm-Rudman-Hollings reductions for FY 1986 are currently hindering the OCC's efforts to achieve fully our supervisory mandate at a time when the banking system is subject to significant pressures. Although the 1986 cuts are manageable, future cuts, if required, will severely impair our ability to supervise national banks. Accordingly, the Administration favors the Congress reconsidering the applicability of Gramm-Rudman-Hollings for 1987 and beyond.

Bank supervision is a major public policy concern. I believe that the Congress -- and the public -- want to see an effective system of bank supervision and regulation. But to quote a well-known slogan, "you get what you pay for." And it is significant that the banks are paying for it.

I have had numerous bankers tell me that they would be willing to pay more in assessments if it would mean that their banks would be examined more frequently and by examiners with more experience. I believe that more flexibility in our compensation and career development program would enable us to retain more experienced staff. In this regard, such proposals were addressed in connection with the Vice President's Task Group on the Regulation of Financial Services.

Funding is not the problem. The OCC is a self-supporting agency funded entirely by user-fees. To carry out its mission, the OCC must be able to spend, from its own funds, the amounts necessary to respond to changing conditions in the banking industry. We should not be subject to arbitrary, across-the-board cuts in spending levels.

STATEMENT OF
EDWIN J. GRAY, CHAIRMAN
FEDERAL HOME LOAN BANK BOARD
BEFORE THE
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE
OF THE
COMMITTEE ON BANKING, FINANCE, AND URBAN AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
JUNE 4, 1986

Mr. Chairman and distinguished members of the Subcommittee:

Thank you for inviting me to discuss with you the important issues raised by the Carper-Lundine bill and H.R. 2282, the "Truth in Savings" bill. I appreciate the opportunity to participate in this dialogue about how best to deal with the strains experienced by the financial regulatory agencies and consumers in this rather more deregulated operating environment for depository institutions.

I. CARPER-LUNDINE

Introduction

The Bank Board believes the Carper-Lundine bill is an excellent starting point for the dialogue we are beginning here today. As you know, Carper-Lundine addresses three main areas of concern. It would remove financial regulatory agencies from the federal budget and appropriations review process; remove employees of the agencies from their current status as civil service employees, and set uniform standards for the classification, pay, and training of all federal depository institution examiners. It also would authorize a redesignated Depository Institutions Examination Council to establish minimum standards for testing and certifying state examiners. Generally speaking, we support the thrust of the Carper-Lundine bill as an appropriate congressional response to the immense challenges currently facing the federal financial regulatory agencies. We do, however, have serious reservations about several provisions of the legislation that would, in our view, diminish the Bank Board's flexibility in exercising its regulatory authority to achieve maximum supervisory effectiveness.

Regulatory Resources in a Deregulated Environment

The new powers available to FSLIC insured thrift institutions demand two responses from the Bank Board. We must administer a strong and healthy insurance fund that will permit the FSLIC maximum flexibility in coping with failed or failing thrifts. The recapitalization of the FSLIC which the Bank Board seeks will not, in and of itself, accomplish the task.

We must have the ability to effectively oversee and supervise the federally-insured institutions for which we are responsible. We cannot protect the financial resources of the FSLIC without adequate human resources to do so. Those resources will be unavailable if the Board and the FSLIC are not funded adequately to ensure the support we need. Thus, the challenge we face is this. We must respond with redoubled effort to our industry's need for effective, sure and timely supervision, while simultaneously coping with the possibility of dramatic diminution in our funding. The Gramm-Rudman-Hollings Act[1] would cause that reduction over time.

I believe it is important, therefore, for the Congress to review alternatives for reducing the impact of Gramm-Rudman-Hollings on the financial regulatory agencies. As you know, the Bank Board and the FSLIC are funded by offsetting collections from non-federal sources. No tax revenues go to either account.

Section 18(b) of the Federal Home Loan Bank Act[2] authorizes the Bank Board to levy semiannually upon the Federal Home Loan Banks an assessment sufficient to provide for payment of its expenses for the succeeding six months. These assessments go into the Bank Board Revolving Fund, which always has an approximately zero net outlay balance because the assessments are approximately equal to the portion of the Bank Board's expenses they fund; any excess collected or deficiency left is credited or debited against the next semiannual assessment. The Federal Home Loan Banks, in turn, derive their funds from earnings on loans and services they provide their member institutions.

In addition, the Bank Board is reimbursed by the FSLIC for services and facilities the Bank Board provides to it. Long ago, the Bank Board and the FSLIC consolidated support services in an effort to provide greater efficiency and economy to our operations. As a result, the FSLIC relies upon Bank Board offices for much of its services and facilities, including legal, accounting, data processing, and other support.

The FSLIC, like the Federal Deposit Insurance Corporation, is funded by insurance premiums, assessments, and admission fees, authorized by the National Housing Act[3] and collected from the institutions whose accounts it insures and by income received from investment of these monies. The federal government's initial investment in the FSLIC, as well as in the

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[1] Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. No. 99-177, 99 Stat. 1038 (1985).

[2] 12 U.S.C. < 1438(b)(1982).

[3] 12 U.S.C. << 1726(d), 1727(b) and (c) (1982).

Federal Home Loan Bank System, was fully retired in the 1950`s. Since that time, operations of the Bank Board, the FSLIC, and the Bank System have been financed as I have just described.

As this description makes clear, a reduction in the administrative expenses of the Bank Board and the FSLIC will not create surplus revenues to apply to the deficit or to fund other government activities. Thus, the rationale and purpose of Gramm-Rudman-Hollings are not served by applying its provisions to the Bank Board or to the FSLIC.

If, despite the clear separation of Bank Board and FSLIC monies from general tax revenues, Gramm-Rudman-Hollings is applied to the Bank Board and the FSLIC, the consequences for the FSLIC can only be deleterious.

Applying 4.3% (the FY-1986 sequester percentage) to the Bank Board`s and the FSLIC`s FY-1986 Congressional limitations, the Congressional Budget Office, the Office of Management and Budget, and the Government Accounting Office determined that for FY-1986 the amounts to be sequestered are $1,156,000 for the Bank Board and $62,000 for the FSLIC or a total of $1,218,000.

The Gramm-Rudman-Hollings Act prescribes a maximum deficit amount of $144 billion for FY-1987. Recent estimates of the FY-1987 deficit range from $30 to $60 billion above this amount. Correspondingly, the potential sequester percentage could range from 12% to 25%. If the amount to be sequestered in FY-1987 is 20% or more, assuming that the Bank Board`s and the FSLIC`s FY-1987 Congressional administrative expense limitation is the base subject to sequestration, this would mean a decrease in Bank Board/FSLIC administrative expenses of $5.5 million or more, depending upon the amount of the sequester.

A cut of the magnitude currently estimated for FY-1987 would seriously impair the effectiveness of the Bank Board and certainly harm the FSLIC. Because 75% of our administrative expenses fund salaries and related benefits and most of the rest are relatively fixed costs, such as building operation expenses, even a relatively small reduction will force immediate staffing reductions in critical areas that the FSLIC requires for daily support functions.

Cutting the FSLIC`s expenses will force it to delay critical default prevention and liquidation activities, with the likely result that the cost of those activities will be much higher when the problems are finally resolved. In other words, cutting the FSLIC`s expenses, however broadly or narrowly defined, will not decrease the FSLIC`s ultimate liabilities and related outlays. Rather, the opposite is likely to occur.

Even if the exemption in Sec. 255(g)(2) of the act were interpreted to exempt the FSLIC completely from the sequestration process, the act would still adversely impact the FSLIC because it relies upon Bank Board offices for many of its services and facilities. As a result, a cut in the Bank Board's administrative expenses implicitly means a cut in resources for the FSLIC at a time when the problems facing FSLIC-insured institutions demand increased rather than decreased resources for the FSLIC if it is to fulfill its legal obligations. As I have suggested earlier, the FSLIC recapitalization bill[4] is one method of assisting the FSLIC to do so. The effectiveness of that legislation will be gravely compromised, however, if as a result of inadequate resources and support, the FSLIC is unable to conduct case resolutions.

It is clear that the Gramm-Rudman-Hollings Act presents serious obstacles for the continued effectiveness of the Board and the FSLIC in carrying out their statutory responsibilities. It is appropriate, therefore, that the Congress consider ways to remove those obstacles.

Oversight of Federal Examination Staff

The Bank Board has a unique perspective on the portion of the Carper-Lundine bill that addresses the oversight of the federal examination staff. As the members of this Subcommittee are aware, in July of 1985 the Bank Board delegated the supervision of its examination force to the Principal Supervisory Agents in each of the twelve Federal Home Loan Bank districts. The Principal Supervisory Agents report directly to, and are accountable to, the Federal Home Loan Bank Board in Washington. This transfer of field examiners has finally given us the full flexibility we need in carrying out our responsibilities to oversee the examination function.

This flexibility is key to the responsible exercise of our regulatory authority. The varying types of institutions regulated by the financial agencies play diverse roles in the overall statutory framework established by the Congress. The thrift industry, for example, is primarily engaged in the financing of housing and real estate. In this regard, the institutions we examine are somewhat different from those regulated by other agencies. The training we afford our examiners and the performance standards we set for them must be adapted to reflect this difference. I believe the Bank Board has achieved success in making the necessary adaptation, by virtue of the flexibility we now have in our Federal Home Loan Bank System structure. This has enabled us to establish a training center for federal thrift examiners, to set professional standards for them, and to very substantially increase their numbers. Moreover, we can now offer compensation at a level that allows us to attract and retain the calibre of examiners we need to look into the operations and conditions of insured institutions.

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[4] H.R. 4907, 99th Cong., 2d Sess. (1986).

In short, I believe that the Bank Board has addressed the need for truly adequate examination oversight addressed in Carper-Lundine. The Bank Board is fully committed to setting the highest standards for its examination staff and to providing the best qualified examiners in order to achieve first rate regulatory supervision of insured institutions. Last year`s transfer of our field examination force to the Federal Home Loan Bank districts has allowed us to accomplish this result while retaining maximum flexibility, hence maximum responsiveness to the needs of the industry we regulate. We believe our approach is consistent with the Congress`s consistent commitment to the preservation of an independent regulatory framework for home mortgage lending institutions. For these reasons, we believe several provisions in Carper-Lundine which could have the effect of eroding the flexibility we have won in our efforts to strengthen and maximize the supervisory effectiveness of the thrift regulatory process, would now be counterproductive.

Status of Federal Home Loan Bank Board Employees

I have recently written to the Office of Management and Budget and to the Office of Personnel Management requesting an exemption from the Classification Act for Bank Board employees. My letters detail the case for such an exemption and include a demonstration of the significant disparities between the employment compensation and benefits available to Bank Board employees and those available to employees of the Federal Reserve Board, the FDIC, and the Office of the Comptroller of the Currency. Copies of my letters are attached to this Statement as Appendix A. It had been our hope that OMB and OPM would respond favorably to these requests and that we, therefore, would not have to seek legislation to remedy the problems presented by our inclusion within the ambit of the Classification Act. On June 2, 1986, however, I received a response from OPM denying our request for an exemption from that Act. OPM`s letter is also included in Appendix A.

The Board members and staff have not yet had the opportunity to review our alternatives in light of OPM`s response. We will, however, be pleased to keep the Subcommittee apprised of developments on this issue and to work with you further in this regard.

Conclusion

The Carper-Lundine bill appropriately addresses issues related to the imposition of unnecessary and counterproductive financial constraints on the Bank Board and the FSLIC that need to be resolved if we are to be able to most effectively supervise the safety and soundness of the thrift industry. I appreciate your willingness to discuss those issues, and hope that further dialogue will result in their resolution. Again, however, in our view, it is important that any such legislative resolution provide maximum flexibility to each agency to respond to the regulatory needs of the industry it is called upon to oversee and supervise.

II. TRUTH IN SAVINGS

The Subcommittee also has requested our views on the Truth in Savings Bill, H.R. 2282, introduced in the House last year. This issue vitally concerns the financial services industry and its customers with regard to advertising and disclosure of terms and conditions relating to deposit accounts. I would like to focus my comments on the need for uniform advertising and disclosure policies, and considerations that Congress should take into account in balancing the costs and benefits associated with advertising and disclosure requirements.

The Bank Board strongly endorses the concept that financial institutions should fairly advertise their products and that customers of financial institutions should have access to accurate details about the terms and conditions which govern their deposit accounts.

To this end, the Board has for many years included in its supervisory agenda regulations and policy statements regarding advertising and disclosure for deposit accounts at Federal thrifts and FSLIC-insured institutions. As conditions in the competitive and legal environment have changed, we have closely monitored our rules and updated them to carry out our goal of assuring meaningful and fair disclosure.

The Board's advertising regulations currently require that institutions disclose interest rates in terms of annual rates of simple interest, and that institutions further clearly and conspicuously disclose time or amount requirements imposed for a deposit to earn the stated rate. Institutions must also clearly and conspicuously state the presence of early withdrawal penalties. Finally, our regulations prohibit institutions from making any advertising representations that could be inaccurate or misleading. A Board policy statement further provides that any advertisement or other solicitation for an interest bearing account which states an interest rate and fails to disclose the existence of service charges that may substantially reduce the yield on accounts is inaccurate and misleading and consequently in violation of Board regulations.

The FDIC and Federal Reserve Board currently have similar regulations, and the Federal Reserve recently has proposed further disclosures. The FRB modifications include advertisement of an annual percentage yield which takes into account the simple interest rate and the effects of compounding; and adds disclosures relating to variable rate and fixed rate deposits on which more than one predetermined rate will be paid during the life of the deposit; service charges and bonus payments. The proposal also would explicitly prohibit advertising IRA and Keogh accounts as tax-free or tax-exempt.

The Bank Board also has adopted regulations and policy statements regarding disclosure of deposit account information to depositors. These policy statements provide that a complete schedule of service charges and fees should be readily available at each office, and that charges and their effect on an account's advertised rate of earnings be disclosed at the time an account is opened. The policy statements also provide that rules regarding delayed availability of funds must be disclosed at the time an account is opened and, when practical, at the time a check is deposited. The policy statements and regulations also provide that as to certificate accounts, the certificates must contain any provisions limiting the right of the holder to make additions to or withdrawals from the account prior to maturity; any provisions relating to renewal at maturity and earnings after expiration of the term; and any provisions relating to variation in the rate of return and the dates or frequency at which earnings are distributable.

Currently, along with staff of the Federal Reserve Board, the Federal Deposit Insurance Corporation, the National Credit Union Administration and the Comptroller of the Currency, our staff is also working to hammer out uniform and streamlined disclosure and advertising regulations for all federally insured deposit institutions.

I believe that uniform action by the federal financial institutions regulators will help maintain adequate protection of customers and an appropriate balance between the benefits and costs to customers and financial institutions inherent in the imposition of advertising and disclosure requirements. Developing a regulatory approach will also preserve vital flexibility to revise regulations to accommodate changing market conditions.

Rapid changes in the financial services arena in the last few years have made it imperative for the federal financial institution regulatory agencies to preserve maximum flexibility with regard to issues, products and services which are evolving from day to day. In this virtually fully deregulated field of deposit accounts, we find that it is impossible to predict the new products that will appear in the market next week, let alone next year. The only constant in the current market is change.

Ultimately, of course, resolving the critical issues of the timeliness and content of statutory reforms in this area is uniquely within congressional prerogatives. If Congress believes that legislation is needed in this area, we hope that you will carefully scrutinize certain requirements which would be imposed by the bill:

- The bill sets forth a list of specific and inflexible advertising and disclosure requirements. Could this become counterproductive for consumers? In this rapidly evolving market, such a rigid list could become outdated and irrevelant to the product and services available, resulting in confusion to consumers.

- The bill would require disclosure of a schedule of all fees, charges, terms and conditions which apply to each type of account and service, whether wholesale or retail, routinely offered by depository institutions and that a new schedule be mailed to all accountholders not less than 30 days before the effective date of any change in the schedule. I am concerned that the costs of printing and distribution of such schedules could be passed on to consumers in the form of higher fees or lower yields;

- The bill does not address the question of the applicability of state truth in savings laws to institutions which would be subject to this federal scheme. I am concerned that this could force institutions to comply with both, even where inconsistent, thus resulting in unnecessary litigation and confusion;

- The bill would provide that all requirements applicable to print advertising also apply to advertising in the electronic media. These would include the annual percentage yield and the method by which interest is compounded, the annual rate of simple interest and period during which it is in effect, the frequency with which interest is payable, all minimum balance requirements, and reference to penalties and fees. This might well make radio and television advertising too costly for institutions which had to include all of the required disclosures while still seeking to get an advertising message across to the audience. Such an awkward result could discourage electronic advertising and reduce information available to consumers.

- The bill would apply to federally insured institutions and those eligible to apply for federal insurance, such as privately insured thrifts. I am concerned that there is nothing in the law to provide for enforcement against privately insured thrifts.

In summary, the Board believes that the efforts of the depository institution regulators themselves to devise uniform, fair and effective deposit account advertising disclosure policies should afford consumers appropriate information. Nevertheless, if the Congress were to decide that legislative reforms were a more appropriate and effective means of addressing these issues, we would be pleased to work with the Congress to achieve the most satisfactory result for both the insured institution and the consumer.

Thank you very much. I will be pleased to try to answer any questions the Subcommittee may have.

APPENDIX A

Federal Home Loan Bank-Board

EDWIN J. GRAY
CHAIRMAN

1700 G Street, N.W.
Washington, D.C. 20552
Federal Home Loan Bank System
Federal Home Loan Mortgage Corporation
Federal Savings and Loan Insurance Corporation

February 3, 1986

Ms. Carol Crawford
Associate Director for Economics
and Government
Office of Management and Budget
The Old Executive Office Building
Washington, D.C. 20503

Dear Carol,

This describes the significant disparities in employment compensation and benefits between the Bank Board and the Federal Reserve Board (FRB), Federal Deposit Insurance Corporation (FDIC), and the Comptroller of the Currency (OCC).

The FRB, FDIC, and OCC have enjoyed for years a range of compensation and benefit flexibilities beyond the reach of Bank Board staff. The flexibilities enable these other agencies to offer-an employment package comparable in large part to the kind found in many private sector enterprises. As a result, the Bank Board has been at a severe double disadvantage in competing for the top talent in the financial industry arena.

The key to these agencies' flexibilities is their exemption from the Classification Act, an exemption rooted in their enabling legislation. Although they generally follow the salary grades and pay ranges of the Classification Act (GS-1-15), the FRB, FDIC, and OCC have the freedom to fix the compensation of their employees and to provide salary enhancements and benefit programs that they deem appropriate. The Bank Board, on the other hand, is restricted from any such independence due to OPM's interpretation (dated August 7, 1957) that our agency is subject to the provisions of the Classification Act.

In terms of basic compensation, the Bank Board can offer an applicant only the minimum salary level of a grade whereas the other financial regulatory agencies can exceed the minimum level. For example, in filling a senior financial analyst position, the Bank Board could offer a candidate with exceptional related experience a starting salary of only $37,599 (step 1 of the GS-13 range); the other agencies could offer $48,876 (step 10 or the maximum rate of the GS-13 range) - a starting difference of $11,277. In setting the grade limits of particular occupations, the Bank Board is restricted to the criteria of classification standards published by OPM (in many cases 15-20 years ago) while the other agencies can determine the value of their occupations according to current industry conditions. Furthermore, in promoting individual employees, the Bank Board is restricted to narrowly defined increases rather than to levels commensurate with employees' contributions.

The Bank Board suffers further disadvantages with regard to compensation enhancements. The FDIC, for example, annually grants each of its employees a regional pay differential over and above any Governmentwide cost of living adjustment. The differential varies from year to year and from one geographic region to another, but all FDIC employees in 1985 received between approximately 2%-10% in addition to their base compensation. In 1986, when all Federal employees (including Bank Board staff) are receiving no salary adjustment, FDIC employees are receiving an increase between 7%-20% on top of their base pay.

Another disparity of this kind exists regarding bonuses. The FRB can grant a bonus to all of its officers each year for superior performance, and the OCC has a salary increment program in which its superior professional employees can receive an increment between 2% and 14% of their basic pay. In contrast, OPM regulations governing Senior Executive Service (SES) performance bonuses restrict cash awards to 30%-35% of the Bank Board's career SES staff. Under a liberal OPM interpretation of these regulations in 1985, we were permitted to grant bonuses to only 3 of our career SES employees. Similarly, Bank Board mid-level managers and supervisors were restricted to performance awards of between 2%-3% of basic pay given the limitations imposed by OPM regulations on employees subject to Merit Pay regulations.

If the advantages enjoyed by the FRB, FDIC, and OCC in determining direct compensation and salary enhancements were not enough of a disparity, these agencies also provide benefit programs far more liberal than standard Government benefit programs available at the Bank Board. Employees in these agencies can choose life insurance and health programs (including dental and vision options) at no cost, or at very limited costs.

Among these three agencies, the highest cost for life insurance is 7 cents biweekly for $1000 of basic coverage (FRB) whereas Bank Board employees pay 20 cents biweekly for $1000 of basic coverage. The cost disparity in health coverage is even more striking. The highest cost for Blue Cross-Blue Shield maximum family coverage among these other agencies is $20.64 biweekly (FRB) where parallel coverage for Government Blue Cross-Blue Shield is $66.13 biweekly.

In addition, both the FRB and the FDIC offer employer-subsidized savings instruments for their employees. The FRB has both a thrift plan and a 401K plan in which the FRB will match 60 cents for every dollar contributed by an employee into these plans (up to a total of 6%). The FDIC provides a 401K plan in which it matches dollar for dollar of employee contributions up to a total of 5%. The OCC has developed a thrift plan but is awaiting final approval from the Treasury Department. The Bank Board, like other Federal agencies, has neither a thrift plan nor 401K plan available for its employees.

Attachment 1 summarizes the benefit comparisons between the Bank Board and these other agencies. We believe it is obvious that the playing field is far from level and that the Bank Board is at a severe disadvantage in trying to compete for the best talent in the marketplace. As long as the restrictions of the Classification Act, the Senior Executive Service and Merit Pay continue to apply, these disadvantages will continue and intensify.

To illustrate the impact of these disparities on our recruitment and retention capability, we are providing you with specific case examples in Attachment 2. We hear these problems cited continuously by our managers and supervisors.

In light of the disparities we have described above and their impact on our ability to recruit and retain talented staff, we continue to be in dire need of relief from several civil service provisions. First, of course, is relief from the Classification Act itself. We have earlier provided you with the last correspondence between the Civil Service Commission (now OPM) and the Bank Board regarding our arguments that this agency is not covered by the Classification Act provisions. It is clear that OPM has the authority to interpret the coverage provisions of the Classification Act and to exempt agencies if they fall within the statutory list of exemptions. Attachment 3 represents the legal argument we have developed in support of an exemption. We believe that OPM should recognize our authority to fix the compensation of our employees.

Second, we need relief from the provisions of Merit Pay and the Senior Executive Service. To obtain an exemption from the Classification Act without comparable flexibility for our senior staff (SES or Merit Pay) would frustrate our basic effort to achieve equity.

Third, we also need the flexibility to offer benefit programs similar to those at the FRB, FDIC, and OCC. We believe the authority to establish such benefits would be implicit in an exemption from the Classification Act but, if not, we are seeking separate authorization to do so. Even if OPM maintained its position that the Bank Board is subject to the Classification Act, we would still need the authority to offer these benefit enhancements as a partial solution to our problems.

As a final request, if OPM does not decide to exempt our agency from the Classification Act, we seek approval to establish special pay rates for our occupational series most severely affected by the compensation disparities cited above. This relief, of course, is a last fallback position from the first three requests because it allows us only to relieve the problems in certain parts of the organization with respect to basic pay.

In my opinion, perpetuation of the disparities and relative inequities which exist today -- and have given this agency unnecessary grief for too long a time -- works to the detriment of a sound national thrift institutions system.

I wish you success in bringing to the attention of OPM the clear and compelling — and yes, urgent — need for change in order to eliminate the unjustified disparities I have outlined above.

Sincerely,

Edwin J. Gray
Chairman

Attachments

Federal Home Loan Bank Board

EDWIN J. GRAY
CHAIRMAN

1700 G Street, N.W.
Washington, D.C. 20552
Federal Home Loan Bank System
Federal Home Loan Mortgage Corporation
Federal Savings and Loan Insurance Corporation

February 18, 1986

Honorable Constance Horner
Director
Office of Personnel Management
1900 E Street, N.W.
Washington, D.C. 20415

Dear Connie:

This describes the significant disparities in employment compensation and benefits between the Bank Board and the Federal Reserve Board (FRB), Federal Deposit Insurance Corporation (FDIC), and the Comptroller of the Currency (OCC).

The FRB, FDIC, and OCC have enjoyed for years a range of compensation and benefit flexibilities beyond the reach of Bank Board staff. The flexibilities enable these other agencies to offer an employment package comparable in large part to the kind found in many private sector enterprises. As a result, the Bank Board has been at a severe double disadvantage in competing for the top talent in the financial industry arena.

The key to these agencies' flexibilities is their exemption from the Classification Act, an exemption rooted in their enabling legislation. Although they generally follow the salary grades and pay ranges of the Classification Act (GS-1-15), the FRB, FDIC, and OCC have the freedom to fix the compensation of their employees and to provide salary enhancements and benefit programs that they deem appropriate. The Bank Board, on the other hand, is restricted from any such independence due to OPM's interpretation (dated August 7, 1957) that our agency is subject to the provisions of the Classification Act.

In terms of basic compensation, the Bank Board can offer an applicant only the minimum salary level of a grade whereas the other financial regulatory agencies can exceed the minimum level. For example, in filling a senior financial analyst position, the Bank Board could offer a candidate with exceptional related experience a starting salary of only $37,599 (step 1 of the GS-13 range); the other agencies could offer $48,876 (step 10 or the maximum rate of the GS-13 range) - a starting difference of $11,277. In setting the grade limits of particular occupations, the Bank Board is restricted to the criteria of classification standards published by OPM (in many cases 15-20 years ago) while the other agencies can determine the value of their occupations according to current industry conditions. Furthermore, in promoting individual employees, the Bank Board is restricted to narrowly defined increases rather than to levels commensurate with employees' contributions.

The Bank Board suffers further disadvantages with regard to compensation enhancements. The FDIC, for example, annually grants each of its employees a regional pay differential over and above any Governmentwide cost of living adjustment. The differential varies from year to year and from one geographic region to another, but all FDIC employees in 1985 received between approximately 2%-10% in addition to their base compensation. In 1986, when all Federal employees (including Bank Board staff) are receiving no salary adjustment, FDIC employees are receiving an increase between 7%-20% on top of their base pay.

Another disparity of this kind exists regarding bonuses. The FRB can grant a bonus to all of its officers each year for superior performance, and the OCC has a salary increment program in which its superior professional employees can receive an increment between 2% and 14% of their basic pay. In contrast, OPM regulations governing Senior Executive Service (SES) performance bonuses restrict cash awards to 30%-35% of the Bank Board's career SES staff. Under a liberal OPM interpretation of these regulations in 1985, we were permitted to grant bonuses to only 3 of our career SES employees. Similarly, Bank Board mid-level managers and supervisors were restricted to performance awards of between 2%-3% of basic pay given the limitations imposed by OPM regulations on employees subject to Merit Pay regulations.

If the advantages enjoyed by the FRB, FDIC, and OCC in determining direct compensation and salary enhancements were not enough of a disparity, these agencies also provide benefit programs far more liberal than standard Government benefit programs available at the Bank Board. Employees in these agencies can choose life insurance and health programs (including dental and vision options) at no cost, or at very limited costs.

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In addition, both the FRB and the FDIC offer employer-subsidized savings instruments for their employees. The FRB has both a thrift plan and a 401K plan in which the FRB will match 60 cents for every dollar contributed by an employee into these plans (up to a total of 6%). The FDIC provides a 401K plan in which it matches dollar for dollar of employee contributions up to a total of 5%. The OCC has developed a thrift plan but is awaiting final approval from the Treasury Department. The Bank Board, like other Federal agencies, has neither a thrift plan nor 401K plan available for its employees.

Attachment 1 summarizes the benefit comparisons between the Bank Board and these other agencies. We believe it is obvious that the playing field is far from level and that the Bank Board is at a severe disadvantage in trying to compete for the best talent in the marketplace. As long as the restrictions of the Classification Act, the Senior Executive Service and Merit Pay continue to apply, these disadvantages will continue and intensify.

To illustrate the impact of these disparities on our recruitment and retention capability, we are providing you with specific case examples in Attachment 2. We hear these problems cited continuously by our managers and supervisors.

In light of the disparities we have described above and their impact on our ability to recruit and retain talented staff, we continue to be in dire need of relief from several civil service provisions. First, of course, is relief from the Classification Act itself. It is clear that OPM has the authority to interpret the coverage provisions of the Classification Act and to exempt agencies if they fall within the statutory list of exemptions. Attachment 3 represents the legal argument we have developed in support of an exemption. We believe that OPM should recognize our authority to fix the compensation of our employees.

Second, we need relief from the provisions of Merit Pay and the Senior Executive Service. To obtain an exemption from the Classification Act without comparable flexibility for our senior staff (SES or Merit Pay) would frustrate our basic effort to achieve equity.

Third, we also need the flexibility to offer benefit programs similar to those at the FRB, FDIC, and OCC. We believe the authority to establish such benefits would be implicit in an exemption from the Classification Act but, if not, we are seeking separate authorization to do so. Even if OPM maintained its position that the Bank Board is subject to the Classification Act, we would still need the authority to offer these benefit enhancements as a partial solution to our problems.

As a final request, if OPM does not decide to exempt our agency from the Classification Act, we seek approval to establish special pay rates for our occupational series most severely affected by the compensation disparities cited above. This relief, of course, is a last fallback position from the first three requests because it allows us only to relieve the problems in certain parts of the organization with respect to basic pay.

In my opinion, perpetuation of the disparities and relative inequities which exist today -- and have given this agency unnecessary grief for too long a time -- works to the detriment of a sound national thrift institutions system.

Sincerely,

Edwin J. Gray
Chairman

Attachments

Attachment I

January 1986

BENEFITS COMPARISON

BENEFITS	FHLBB	FRB	FDIC	OCC
LIFE INSURANCE				
Coverage	Fed. Emp. Grp. Life Ins. Basic (salary plus $2,000) and Optional extras	Fed. Emp. Grp. Life Ins. or Manhattan Life Basic (salary plus $2,000) and Optional extras	Fed. Emp. Grp. Life Ins. or Manhattan Life Basic (Salary plus $2,000) and Optional extras	Fed. Emp. Grp. Life Ins. or Manhattan Life Basic (salary plus $2,000) and Optional extras
Cost	Basic $.20/$1,000 biweekly for employee portion	Basic $.07/$1,000 biweekly for employee portion	FDIC pays full cost	Basic .05/$1,000 biweekly for employee portion
HEALTH INSURANCE				
Coverage	Fed. Emp. Health Benefits Prog. Over 200 plans (self & family choices)	Fed. Emp. Health Benefits Prog. or FRB Blue Cross-Blue Shield (includes vision care)	Fed. Emp. Health Benefits Prog. or FDIC Blue Cross-Blue Shield	Fed. Emp. Health Ben. Prog. or OCC Blue Cross-Blue Shield
Cost	Varies by plan (BC-BS: $66.13 biweekly for max. family coverage)	BC-BS: $20.64 biweekly for max. family coverage; $7.72 biweekly for self coverage	FDIC pays full cost of self coverage; employee pays for additional family coverage ($12 biweekly)	OCC pays full cost of self coverage; employee pays $13.84 for additional family coverage
Dental/ Vision Coverage	Available in some plans, but with significant limitations	Connecticut General $3.47 biweekly for family coverage	Connecticut General FDIC pays full cost for self & family dental care, but self only vision care	OCC pays full cost for self & family dental care, but self only vision care

BENEFITS	FHLBB	FRB	FDIC	OCC
AWARDS/BONUSES	Merit Pay employees (2%-3% of salary if superior performance rating); SES (5-20% of salary if superior performance rating), but limited to 1/3 career SES employees.	All officers (90) eligible for bonuses based on superior performance. Amounts subject to annual funds	All employees eligible for the following awards: Sustained Superior Performance/Min. Amt. $100; Max. Amt.-lump sum equivalent to a step-increase at employee's grade level; Special Act or Service/$25-10,000 based on benefit of accomplishment and the degree of effectiveness; QSI; and Honorary Awards	All professional employees eligible for salary increments between 2%-14% if performance rating is acceptable or higher
THRIFT PLAN				
Employee Contributions	None	Up to 10% salary	None	OCC has developed a thrift plan but is awaiting final approval from Treasury Department
Employer match	None	$.60/$1.00 up to 6% of salary*	None	None
401K feature Employee Contributions	None	Up to an additional 10% of salary	Up to 10% of salary	
Employer Match		$.40/$1.00 up to 6% of salary* *6% is a total limit for Thrift & 401K contributions	100% of first 5% contributed by employee	
REGIONAL PAY DIFFERENTIALS	None	None	Annual salary increment in addition to Government COLA. Increase based on geographic cost of living survey, but most recent range was between 7%-20%	None

Attachment 2

RECRUITMENT

- In recruitment events, the Bank Board has participated with the top 10 banking and investment firms including: Hanover's Trust, Mellon Bank, Bank of Chicago, Continental Illinois, Exxon, Morgan Guaranty Bank and Trust, and Citibank. These companies offer starting salaries in the range of $32,000 to $36,000. Candidates are incredulous when they learn that the Bank Board offers a starting salary of $21,804 (GS-9, step 1). An MBA candidate interviewed at the Wharton School of Business stated that he would accept employment with the Bank Board only if offered a starting salary of $42,000.

- Another candidate declined initial federal employment as a financial analyst with the Bank Board because we could not pay his relocation expenses while FDIC could.

- Secretarial candidates decline offers of employment citing, as a reason, higher paying private industry positions. As an example, one major policy office has five secretarial vacancies which we have not been able to fill: two have been vacant six months, one has been vacant five months, and two have been vacant two months.

- Candidates for secretarial positions from temporary companies continually decline Bank Board employment because they can make more money as temporary contract clerical help. As an example, a candidate was offered a clerical position at a salary of $12,862 per annum (GS-4, step 1), a rate of $6.16 per hour. She currently earns between $8.00 and $11.00 per hour and declined because she couldn't afford the loss in income.

- A secretary declined our offer of employment when her firm offered her a $3,000 increase to stay.

- A candidate declined the position of financial analyst because, on his salary, he would not be able to afford the cost of living in Washington, D.C.

RETENTION

- Over the last two years, approximately 20 employees (including some of our most experienced managers in the financial and legal occupations) resigned from the Bank Board to accept employment with the Federal Home Loan Bank System because of higher salaries and better benefits.

- In the last month, a financial analyst resigned and accepted a lateral job offer with the Comptroller of the Currency. A major contributing factor in this decision was an opportunity to participate in their more lucrative bonus system.

- Over the past six months, eight administrative employees have resigned to accept employment with FDIC due to their salary flexibility and annual cost of living increases. Two employees, who recently accepted lateral transfers to FDIC, received an immediate increase in compensation of between $2,500 and $4,000 annually due to the FDIC regional pay differential program.

- An attorney just recently resigned from the Bank Board to accept employment with a private law firm at a salary double that earned as a federal employee. In fact, from June 1984 to June 1985, the Office of General Counsel lost sixteen attorneys to private industry. Entry level attorneys often cite improved opportunities for rapid promotions at law firms rather than the one-grade government requirement. Experienced attorneys usually join firms either starting or expanding thrift/banking practices. A GS-14 attorney can usually receive a 15-20% salary increase and join a firm as Senior Associate with prospects excellent for making partner within 1-2 years. Additionally, within the past two and one-half years, six attorneys have left the Office of General Counsel to join the Federal Home Loan Bank System.

- Two financial economists qualified at the GS-9 and GS-11 level under OPM standards resigned because they felt their qualifications warranted a two-grade higher rating.

- Turnover continued to be high during the last two fiscal years: an average of 23.6% for FY84 and FY85, compared to the governmentwide rates of 11.4% and and 12.3% for FY 83 and FY 84, respectively (the latest available figures).

- 32% of employee separations in FY 85 were at the GS-13 level and above compared with 24.9% in FY 84 and 51% in FY 83. In FY 85, there was a phenomenal turnover of staff at the GS-13 level and above. For three of the major policy offices, that turnover rate was: Office of General Counsel, 52%; Office of Examinations and Supervision, 39%; Federal Savings and Loan Insurance Corporation, 33%.

- The reason for resignation as one employee stated in the following letter to his supervisor is representative of the problems the Bank Board is experiencing in retaining qualified employees.

ATTACHMENT 3

Legal Arguments in Support of an Exemption from the Classification Act for the FHLBB and the FSLIC

Inclusion within the statutory definitions:

The Classification Act (Chapter 51 of Title 5 U.S.C.) applies to "Executive agencies" (5 U.S.C. § 5102(a)(1)(A)), a term which is defined as including "Government corporations" and "independent establishments" (5 U.S.C. § 105).

The Federal Home Loan Bank Board ("FHLBB") is "an independent agency in the executive branch" under § 17 of the Federal Home Loan Bank Act ("FHLB Act"), 12 U.S.C. § 1437. Under 5 U.S.C. § 104, an "independent establishment" is defined as "an establishment in the executive branch ... which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment." Thus, the FHLBB clearly is an independent establishment as defined in Title 5.

The Federal Savings and Loan Insurance Corporation ("FSLIC") is "a body corporate" and "an instrumentality of the United States" under § 402(c) of Title IV of the National Housing Act ("NHA"), 12 U.S.C. § 1725(c), and is a "wholly owned Government corporation" under 31 U.S.C. § 9101(3) (Government Corporation Control Act as codified in Title 31 of the U.S. Code). Under 5 U.S.C. § 103, a "Government corporation" is defined as "a corporation owned or controlled by the Government of the United States". Thus, a wholly owned Government corporation under Title 31 is clearly a Government corporation under Title 5.

Exemption from coverage of the Classification Act:

If an agency is an "Executive agency," the only way to escape application of the Classification Act is to fall within one of the exemptions listed in 5 U.S.C. § 5102(b). Section 5103 of Title 5 gives the Office of Personnel Management ("OPM") the authority to determine the applicability of § 5102 to specific positions and employees. Over the years, the FHLBB and the FSLIC have argued that they fell within exemption (25), among others.

Exemption (25) states that the Classification Act does not apply to "positions for which rates of basic pay are individually fixed, or expressly authorized to be fixed, by other statute, at or in excess of the maximum rate for GS-18."

Arguments in support of exemption (25):

The basic pay for the FHLBB's Chairman and Board Members is clearly "individually fixed" by 5 U.S.C. §§ 5314 and 5315 at and in excess of the maximum rate for GS-18, since it is fixed at Level III and Level IV of the Executive Schedule, respectively.

Section 19 of the FHLB Act, 12 U.S.C. § 1439, authorizes the FHLBB to "select, employ, and fix the compensation" of such officers, employees, attorneys, and agents as shall be necessary for the performance of its duties **without regard to the provisions of other laws applicable to the employment or compensation of officers, employees, attorneys, and agents of the United States.**" (Emphasis added.) However, "(n)o such officer, employee, attorney, or agent shall be paid compensation at a rate in excess of the rate provided in the case of members of the Board." In addition, language added in 1935 to § 19 of the FHLB Act, states, as to the FHLBB's employees, that their "employment, compensation, leave, and expenses shall be governed solely by the provisions of this chapter, specific amendments thereof, and rules and regulations of the Board not inconsistent therewith."

Thus, § 19 of the FHLB Act clearly is a statute which "expressly authorizes" the FHLBB to fix the compensation of its officers, employees, attorneys, and agents at or in excess of the maximum rate for GS-18, although the maximum rate authorized by § 19 is that "provided in the case of members of the Board" (Level IV of the Executive Schedule), a rate in excess of the maximum for GS-18. The fact that rates of basic pay are authorized to be fixed at or in excess of the maximum for GS-18 does not necessarily mean that any or all employees' basic pay must be set at that rate. It merely means that the agency has discretion to set basic pay rates at that level if it chooses.

Section 402(c)(5) of Title IV of the National Housing Act ("NHA"), 12 U.S.C. § 1725, contains language similar to that of § 19 of the FHLB Act in that it authorizes the FHLBB to fix the compensation of the FSLIC's officers, employees, attorneys, and agents "without regard to the provisions of any other laws relating to the employment or compensation of officers or employees of the United States."

Some, including the codifiers of the U.S. Code, have taken the position that the "without regard" language of § 19 of the FHLB Act and § 402(c)(5) of Title IV of the National Housing Act is obsolete and superceded because Public Law 880, the Act of Nov. 26, 1940, ch. 919, title I, § 1, 54 Stat. 1211, and Executive Order 8743, April 23, 1941, covered most excepted positions into the competitive civil service and the Classification Act by its own terms (5 U.S.C. § 5102(b)) applies, except as provided in 5 U.S.C. §§ 5102(c) and (d), to "all civilian positions and employees in or under an agency." Therefore, they argue that the "without regard" provisions of § 19 of the FHLB Act and § 402(c)(5) of the NHA are clearly inconsistent with these later provisions.

In addition, it is sometimes argued that the "without regard" provisions of § 19 of the FHLB Act and § 402(c)(5) of Title IV of the NHA were made obsolete and superceded by the Classification Act of 1949 ("1949 Act"), 63 Stat. 954, because a major purpose of the 1949 Act was to include in its coverage positions and agencies which had been excepted from the Classification Act of 1923. Section 201 of the 1949 Act (now codified as 5 U.S.C. § 5102) clearly included the FHLBB and the FSLIC within the definition of "agency" to which the act applied; and §§ 1202 and 1204 of the 1949 Act, 63 Stat. 972, 973, repealed the Classification Act of 1923 and all laws or part of laws inconsistent with the 1949 Act to the extent of such inconsistency.

Nevertheless, Congress has never explicitly repealed the "without regard" provisions of § 19 of the FHLB Act and § 402(c)(5) of Title IV of the NHA. Unlike Title 5 or Title 31, Congress has not adopted the codified version of Title 12. In the absence of express repeal, unless the provisions can be construed to have been repealed by implication, these provisions should govern.

Repeals by implication are not favored, so courts have generally required that the legislative intent to repeal must be clear and manifest. That is not the case here. In addition, neither of the two well-settled categories of repeals by implication apply since (1) the provisions of the two acts and those of Title 5 and its predecessors are not in irreconcilable conflict and (2) the provisions of Title 5 do not necessarily cover the whole subject and clearly act as a substitute for the provisions of the FHLB Act and the NHA. See Posadas v. National City Bank, 296 U.S. 497, at 503.

It should be noted that 5 U.S.C. § 5102(c) contains 27 numbered exemptions, some of which are described in general terms, which Congress added to avoid conflict with existing laws governing the employment and compensation of various classes of Federal employees. Several of these exemptions, including number (25) are consistent with the provisions of § 19 of the FHLB Act and § 402(c) of the Title IV of the NHA. Thus, it is not at all clear that in enacting the 1949 Act or in subsequently codifying Title 5 in 1966 that Congress intended to implicitly repeal § 19 of the FHLB Act and § 402(c) of Title IV of the NHA.

For the above reasons, the FHLBB and the FSLIC should be found to be within the provisions of exemption (25) in 5 U.S.C. § 5102(c) and therefore be exempt from the Classification Act (Chapter 51 of Title 5) and related provisions of Title 5 of the United States Code.

APPENDIX B

In his May 27, 1986 letter to Chairman Gray, Chairman St Germain posed six questions related to H.R. 2282, the Depository Institution Examination Improvement Act of 1986 ("Carper-Lundine bill"). Those questions together with the responses of the Federal Home Loan Bank Board ("Bank Board") are set forth below.

1. In your view, are the employees of your agency public sector or private section employees?

Are the examiners in your agency public sector or private sector employees?

Since 1957, the Office of Personnel Management ("OPM") has taken the view that the Bank Board is subject to the provisions of the Classification Act, which fixes the range of compensation and benefits available to federal employees. Chairman Gray has recently written both to OPM and to the Office of Management and Budget requesting a change in this interpretation, that is, an exemption from coverage by the Classification Act. His letters are attached as Appendix A to his formal Statement, dated June 4, 1986, as is OPM's response, dated May 30, 1986, denying the request.

Federal thrift industry examiners are no longer subject to the Classification Act, however. In July of 1985, the Bank Board delegated oversight of its examination force to the Principal Supervisory Agents in the twelve Federal Home Loan Bank districts. This transfer has permitted us to begin to develop a larger, better trained, and more effective field examination force, as Chairman Gray has detailed at pages 11-12 of his Statement to the Senate Committee on Banking, Housing, and Urban Affairs, dated March 13, 1986. A copy of these pages is attached as Appendix D.

2. What specific salary and benefit provisions in present law are lacking in order to retain examiners in your agency?

Is it possible to keep financial institutions regulatory agency personnel subject to civil service pay scales, generally, but to provide certain limited exemptions where needed?

As indicated in the answer to Question 1, the Bank Board itself no longer employs field examiners. In the relatively short time since their transfer, however, our experience has been encouraging in that the Principal Supervisory Agents have hired more and better qualified examiners than was previously possible. We believe that greater flexibility in determining pay scales and other employment benefits would produce similar results with respect to other agency personnel. This result can be achieved if civil service pay scales continue to apply to Bank Board personnel so long as the agency retains discretion to determine and apply limited exemptions to civil service coverage. In our view, therefore, any legislation affecting the status of Bank Board employees should leave the matter of exemptions to this agency's discretion so that we can retain the flexibility that thus far appears successful with respect to examination staff.

3. The Gramm-Rudman legislation only applies to the regulatory agencies when a sequestration order takes effect. Every effort is being made by the Congress to meet the FY 1987 budget deficit target of $144 billion. In the present situation, there is unlikely to be a sequestration order until October of 1987.

In light of these circumstances, where is the immediate necessity for taking examiners out from under Gramm-Rudman until other factors develop that may require such measures?

Since the oversight of federal thrift industry examination staff has been transferred to the Principal Supervisory Agents, and since the Banks would not be subject to a sequestration order under Gramm-Rudman, no such order would affect our examination staff. As Chairman Gray points out in his formal statement to this Subcommittee, however, a sequestration order would have a crippling effect on the FSLIC by drastically reducing the resources and support available to it to manage its case load. Moreover, FSLIC's proper management of its caseload requires planning and preparation, which cannot occur in a climate of constant uncertainty as to what resources will be available. Thus, it is critical that the issue of the applicability of Gramm-Rudman to the Board and the FSLIC be speedily resolved.

4. Will raising the pay levels of federal examiners cause state regulators to lose many of their examiners?

The transfer of the oversight of federal thrift examiners to the Principal Supervisory Agents at the district Banks is too recent -- within the past year -- to permit meaningful conclusions to be drawn about the transfer's effect on state examination forces. Thus, we cannot say with any certainty that state examiners will be drawn to our district Bank examination staffs because of more attractive wages and benefits. Some turnover may, perhaps, occur.

Our first priority as federal regulators, however, has been to ensure that our federal examination staff is fit for its task. We believe that to be an appropriate legislative priority as well. Moreover, the effectiveness of some state examination forces has become problematic in light of the fact that certain states have reduced the numbers of their examiners. In fact, in the recent past, the Board has imposed a moratorium on chartering de novo institutions in states where it concluded that the examination force was inadequate. Under these circumstances, it falls to the federal financial regulators to set the standard for enhancement of examination staffs.

5. Is there a problem with turnover rates at your agency with personnel other than examiners? If so, please explain fully.

As explained at page 17 of Chairman Gray's Statement of the Senate Committee on Banking, Housing and Urban Affairs, dated March 13, 1986, "[t]he Bank Board is plagued with recruitment and retention problems." The reasons for these problems, in particular the disparity in salary and compensation between the Bank Board and the other financial regulatory agencies, are more fully set forth in Appendix A.

6. What would be your alternative to the approach taken in the latest version of the Carper/Lundine bill?

As indicated in Chairman Gray's formal Statement to this Subcommittee, the Bank Board would encourage the Congress to adopt two legislative goals with regard to this issue. First, exemption of the Bank Board and the FSLIC from the constraints that would be imposed under Gramm-Rudman is essential to ensure the FSLIC's continued, effective operation. As members of the

Senate Committee on Banking, Housing, and Urban Affairs have recently written to the Director of the Office of Management and Budget:

> [T]he proposed reductions in the administrative expenditures of [the financial regulatory] agencies could not have come at a worse time in the history of our financial system. Bank and thrift institution failures have reached an all time high, and the projections indicate these failures will continue for the next several years. Unless the supervisory agencies are permitted to take timely action to deal with the emerging problems in our financial system, we can be faced with a crisis of public confidence that can have profound repercussions on our financial stability.

Their letter is attached to this statement as Appendix C. Thus, the Board would encourage legislation narrowly tailored to avoid the grave consequences that Gramm-Rudman would have on the Bank Board and the FSLIC.

Second, in the Bank Board's view, retention by the financial agencies of maximum regulatory flexibility is a crucial goal. As discussed in Chairman Gray's statement, that flexibility is one key to the Board's successful delegation of the oversight of its examination force to the Principal Supervisory Agents in the twelve Federal Home Loan Bank districts. For this reason, legislation that would reduce flexibility -- such as Carper-Lundine's provisions on oversight of examiners and its provision requiring the Board to consider annual reports by the Depository Institutions Examination Council in fixing the compensation of Federal Home Loan Bank officers -- are, in the Board's view, inappropriate. The Board would, therefore, encourage alternatives to Carper-Lundine that permit retention of its flexibility in important areas such as those just described.

APPENDIX C

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAY 28 1986

Honorable Jake Garn
Chairman
Committee on Banking, Housing,
  and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your Committee's concerns about the application of the Balanced Budget and Emergency Deficit Reduction (Gramm-Rudman-Hollings) Act to the financial institution regulatory agencies (the Federal Deposit Insurance Corporation (FDIC), the Federal Home Loan Bank Board (FHLBB), the Federal Savings and Loan Insurance Corporation (FSLIC), the National Credit Union Administration (NCUA), and the Office of Comptroller of the Currency (OCC)). Although we share many of your concerns, we must enforce this Act as written. We do not have the discretion to exempt these agencies. Under current law, these agencies are to be subject to the sequestration process. More specifically, it is clear to us that Congress exempted only the prior legal obligations of the FDIC, FSLIC, and the National Credit Union Share Insurance Fund (NCUSIF). As you know, the Congressional Budget Office and the General Accounting Office have endorsed this interpretation.

We fully agree with you that all of the expenses of these agencies are financed by fees assessed to their respective financial institutions and that they are not funded directly by general tax revenues. However, these user fees are established in Federal statute to pay for Federal services such as bank examinations or, in the case of deposit insurance to help compensate for the risk which the Federal Government is assuming. As such, these fees are similar to other Federal user fees, for example, FHA mortgage insurance premiums, SBA Business and Investment Loan Guarantees, Maritime Administration Title XI loan guarantees and many others found throughout the Federal budget. Increases in the amount of these Federal funds collected will reduce the total Federal deficit, while increases in costs financed with these Federal funds will increase the Federal deficit. Clearly, these agencies and their deposit insurance funds are an integral part of the Federal budget and directly affect the deficit.

Moreover, we believe that the stability of the deposit insurance system and the resulting public confidence in that system result from the fact that the deposit insurance funds are part of the Federal Government, not the fact that the insurance funds are self-supporting. By being part of the Federal Government and being included in the Federal budget, these Federal agencies must comply with the rules which we apply to all Federal agencies for consistent treatment of Federal financial operations. This may occasionally expose these agencies' budgets to the type of across-the-board spending reductions which the Congress intended in passing Gramm-Rudman-Hollings.

When OMB and CBO issued the sequestration report on January 15 of this year, we held jointly that only administrative expenses of these agencies should be subject to sequestration and all capital expenditures and insurance expenses should be exempt. The GAO, however, interpreted the law more broadly and expanded the sequestrable base to encompass all non-insurance expenses. As you know, Gramm-Rudman-Hollings precludes the Executive Branch from varying in any manner from the report issued by the Comptroller General. We are therefore obligated to execute the sequester consistent with the GAO view.

We share your concern over the condition of the financial system and agree that we need to have a strong examination and supervision function within the financial regulatory agencies. While it may be argued that administrative expenditures should be exempt because they are directly related to the insurance function, we have found no legal justification for defining these expenditures as being prior legal obligations, as you suggested in your letter. Thus, there is no legal way to reverse the President's sequestration order for the current fiscal year.

This situation could change for 1987, should the Congress enact legislation exempting these agencies from the sequestration process, or if Congress adopts a budget that meets the Gramm-Rudman-Hollings targets and thereby avoids the automatic sequestration of these agencies' funds. In that regard, may I respectfully urge your support for the President's 1987 budget proposals, which would produce a deficit within the $144 billion target.

On the matter of apportionment, we will be apportioning the FDIC and the OCC shortly, in major part to assure that the sequestration order for 1986 is implemented. In addition, we are concerned about the nature and size of the obligations being made by the depository insurance and banking regulatory agencies during this time of strain in the banking sector of the economy. OMB has been apportioning the FSLIC and the NCUSIF for many years and we believe it is desirable to apply the same procedures to the FDIC and the OCC. OMB has never impaired the FHLBB or the NCUA from carrying out their primary missions, and there is no reason to expect any difficulties with the FDIC and OCC apportionments.

Apportionment is an important tool because it requires Federal agencies to follow Government-wide rules for recognizing legal obligations, recording them promptly, and keeping financial records. It helps to ensure that agencies carry out their responsibilities in a manner that is consistent with uniform budget concepts. This is particularly important in the banking area because of the many alternative methods these agencies have for taking action to resolve problems of troubled financial institutions. Some of these alternatives entail substantial costs. Moreover, some can involve substantial future contingent liabilities, which can produce major increases in the deficit should those contingent liabilities materialize as actual costs. Apportionment thus permits the President's senior advisers to have some oversight and advance knowledge of the legal obligations, especially the increase in contingent liabilities, which an agency is undertaking and the potential Federal outlays that could result. The Executive branch cannot responsibly fulfill its duties to administer the laws in an effective manner without such tools as apportionment.

Thank you for the opportunity to explain our position on these matters to you and other members of the Banking Committee.

Sincerely yours,

Joe

James C. Miller III
Director

c: The Honorable:

William Proxmire
Donald W. Riegle, Jr.
Chic Hecht
John Heinz
Mack Mattingly
Phil Gramm
Alfonse M. D'Amato
Christopher J. Dodd
Paul S. Sarbanes
Jim Sasser
Alan J. Dixon

APPENDIX D

STATEMENT OF

EDWIN J. GRAY, CHAIRMAN

FEDERAL HOME LOAN BANK BOARD

BEFORE THE

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

UNITED STATE SENATE

MARCH 13, 1986

We believe that if repeal of the provisions I have described were to occur, acquisitions of failing institutions would come to a screeching halt. This would eliminate any purported increase in tax revenues. Given the enormous strains on the FSLIC fund, we believe these portions of the the Tax Reform Act are "pennywise and pound foolish." Although the House tax staff estimates increased revenue of $1.3 billion, we find this figure completely illusory. In fact, liquidating payments would increase and, since the full faith and credit of the United States implicitly back the FSLIC insurance fund, repeal of these critical provisions would ultimately cost the Treasury more than the cost of continuing the existing tax rules.

We believe it is absolutely critical to eliminate these provisions from the Tax Reform Act entirely. My fellow Board members and I have expressed these concerns to the appropriate Committees. We will continue to press for preservation of the current tax treatment to protect the FSLIC's resources.

IV. BANK BOARD INITIATIVES TO STRENGTHEN THRIFTS AND THE FSLIC

Over the last year, the Board has taken a number of steps to improve industry health and the condition of the FSLIC.

A. IMPROVING THE EXAMINATION AND SUPERVISORY PROCESS

The Bank Board has made a herculean effort within its limited resources to address the examination and supervision needs posed by the thrift industry. On July 7 of last year, we transferred our field examination function to the twelve Federal Home Loan Bank districts, a move which has enabled us to pursue the process of building a better trained and more effective field examination force. Within less than six months of that transfer, the number of examiner professionals in the twelve districts was increased from 747 to 1,003, or 34.3 percent. This transfer of the examination function has enabled our Principal Supervisory Agents to hire more and better qualified candidates than had been previously possible. The trend will continue. We will hire 250 more examiners by June 30, 1986, and we expect to have more than 1,500 field examiners in the field by the end of 1986.

In addition to increasing our field examination force, we have also doubled our supervisory staffs in the districts in the last eighteen months. We have directed the Principal Supervisory Agents to continue this buildup.

As a result of the continuing increase in our examination and supervisory forces in the Federal Home Loan Bank districts, the Board has established what amounts to a national field examination and supervisory strike force which can be assigned to meet special, critical needs in any of the districts.

Since the Board delegated the field examination functions to the Principal Supervisory Agents of each district, and while we continue to delegate further supervisory functions to the Banks, it is critical that the Board continuously review, monitor, and closely oversee the effectiveness of examination and supervision.

In this regard, the Board has begun to put in place, through a system-wide task force, the best and most modern computerized systems both for examination reports and supervisory actions, and to computerize input from each institution for the monthly and quarterly financial data required by the Board. We intend to put onto computer, on a continuing basis, all examination reports and the supervisory follow-up to examination reports, so that the Bank Board can more effectively audit and oversee that joint field function in Washington. The computerized tracking and information system for examination and supervision, integrating the Board's central financial reporting system, will be a needed, additional tool for monitoring and evaluating the Federal Home Loan Banks' compliance with Board policies and delegated responsibilities. Moreover, I have asked Board Member Mary Grigsby to lead a task force to establish a post-decisional or post-action audit review process for the Bank Board utilizing the new computer systems. She has reported substantial progress in this area.

B. CREATION OF THE OFFICE OF ENFORCEMENT

Improving and increasing our examination and supervision staffs is only one part of the total enforcement emphasis of the Bank Board. In November 1985 the Bank Board created a new and separate Office of Enforcement, comprised of the staff of the former Division of Enforcement within the General Counsel's Office. Shortly thereafter, the Office was authorized to double its size in 1986. This reorganization allows us to act even more quickly and aggressively to halt abusive practices which threaten the FSLIC fund. The increased volume of formal enforcement activity is a direct result of the increased level of examining and supervisory personnel, as well as a series of supervisory directives the Board sent in 1985 to impress upon all supervisory personnel at the twelve Federal Home Loan Banks the need to vigorously enforce all laws and regulations. In particular, the Board directed that immediate and effective supervisory action be undertaken for all unsafe or unsound practices and that immediate referrals be make to the Office of Enforcement for all material violations of laws, regulations, and agreements. These directives have already resulted in substantial increases in both informal supervisory actions and formal enforcement actions.

C. FEDERAL ASSET DISPOSITION ASSOCIATION

Another significant initiative in 1985 was the formation in November of the Federal Asset Disposition Association, or FADA, frequently termed in press reports the "406 Corporation." The FADA is a wholly owned subsidiary of the FSLIC, which will manage and

TESTIMONY OF

ROGER W. JEPSEN

CHAIRMAN

NATIONAL CREDIT UNION ADMINISTRATION

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS SUPERVISION,

REGULATION AND INSURANCE

COMMITTEE ON BANKING, FINANCE

AND URBAN AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

JUNE 4, 1986

Mr. Chairman, thank you for affording the National Credit Union Administration the opportunity to testify on two significant measures pending before your Subcommittee, the "Depository Institutions Examinations Improvement Act of 1986," sponsored by Congressmen Carper and Lundine, and the "Truth in Savings Act", sponsored by Congressman Lehman. The National Credit Union Administration supports both of these bills and commends their sponsors and numerous cosponsors for the development of legislation we believe represents important steps to assist consumers and to protect the safety and soundness of our Nation's depository institutions.

The "Depository Institutions Examination Improvement Act" would be of significant assistance in enabling NCUA to fulfill its mission of safeguarding the country's federally-insured credit unions. By freeing our Agency from constraints now imposed by OPM, OMB, and the Gramm-Rudman-Hollings Act, this legislation would permit NCUA to provide quality supervision of credit unions in this time of substantial deregulation.

In order to better understand the need for the Carper-Lundine Bill, I would like to describe our present responsibilities and funding.

The National Credit Union Administration charters, supervises and insures 10,100 Federal credit unions. At yearend 1985, these credit unions had combined assets of $78 billion, shares totaling $72 billion, loans of $48 billion, and nearly 30 million members. In addition, the Agency insures member accounts at another 4,969 state-chartered credit unions, with nearly 16 million members. We receive no appropriation of tax money from the Congress for any of our activities. Rather, NCUA is funded exclusively by credit unions and by earnings on investments.

NCUA's funding is segregated into three separate accounts or funds. These are the Operating Fund, the National Credit Union Share Insurance Fund (NCUSIF), and the Central Liquidity Facility (CLF). All of these are U.S. Treasury accounts classified as public enterprise revolving funds.

The Operating Fund is used for the payment of Agency expenses such as payroll, travel, and administrative costs. Revenue is derived from an annual operating fee assessment paid by all federally-chartered credit unions and from expense reimbursements by the Share Insurance Fund and the Central Liquidity Facility. The operating fee assessment is approved each year by the NCUA Board in an amount sufficient to cover budgeted expenses.

The Share Insurance Fund pays liquidation costs and financial costs (such as the expenses associated with mergers) directly and reimburses the Operating Fund for its share of the Agency's operating expenses. Revenue is currently derived entirely from the interest earned on credit union-contributed capitalization deposits. The NCUA Board also has the authority to assess an insurance premium on insured credit unions to finance expenses of the Fund. However, since the Fund was capitalized by Act of Congress in 1984, we have not had need for a premium assessment.

The CLF is supported by earnings on investments and interest on loans to credit unions. The capital used for investments is derived from credit union stock subscriptions. Member credit unions are required to maintain one quarter of one percent of their paid-in and unimpaired capital and surplus in CLF capital stock. Another one quarter of one percent of paid-in and unimpaired capital and surplus must be held by the member in liquid assets on call by the CLF. The CLF appears before Congress annually for limitations on borrowing and expenditures, but not for appropriations.

Once again, Mr. Chairman, none of these accounts receives tax revenues from the Treasury.

In recent years we have seen an acceleration in the growth of all aspects of the credit union movement. Members of federally-insured credit unions are up from 37 million in 1980 to over 46 million today; assets at Federal credit unions have grown from $30 billion to an estimated $82 billion in March of this year. This dramatic growth has been accompanied by a greatly increased sophistication among both credit union members and officers. Many credit unions now offer a full range of consumer financial services to their members. The fact that the board of directors of a credit union consists of volunteers makes it important that NCUA maintain a fully staffed and well trained corps of examiners to assist the management in understanding and adjusting to our rapidly changing financial environment. Another significant factor increasing NCUA's workload is the large number of conversions from private to Federal insurance which have occured over the past year and are continuing.

In today's environment of substantial deregulation, there is a great need for a quality, experienced examiner force to safeguard the savings of credit union members and the assets of the National Credit Union Share Insurance Fund. At NCUA, we believe less regulation in Washington ought to be accompanied by more supervision in the field. However, given the present constraints on hiring and promoting our examiner force, it is increasingly difficult for NCUA to fulfill its statutory mission of promoting and protecting credit union safety and soundness.

In 1965, Mr. Chairman, the Agency had approximately 300 examiners. Today we have 347 - a 16% increase. During this same period of time we have seen a 1,686 percent increase in the size of the average Federal credit union, from $431,000 to $7.7 million. In 1965, only one Federal Credit Union had more than $50 million in assets. Now 482 federally-insured credit unions exceed this level with the largest exceeding $2 billion in assets.

NCUA's field examiner turnover rate for the four-year period from 1982 through 1985 averaged 16.5% annually. During this period, out of an average examiner work force, including supervisory examiners, of 357 positions, there were a total of 236 separations, or 59 annually, from the Agency. This condition creates a number of adverse results, including the devotion of a disproportionate amount of the Agency's human and financial resources to the hiring and training of new, unskilled examiners. High turnover also perpetuates an overall work force that, while consisting of dedicated and responsible individuals, lacks the experience necessary to most effectively examine and supervise credit unions operating in today's complex financial world.

We believe these problems are, in large part, attributable to constraints imposed on the Agency pursuant to Federal personnel laws in the areas of hiring, classification and pay. For example, stated in 1985 dollars, the annual salary of an entry-level examiner (GS-7, Step 1) is $3,000 less than it was in 1975. In high cost-of-living areas, such as New York, Chicago and San Francisco, the starting annual salary for an entry-level examiner ($17,800) is as much as $3,000 less than the average private-sector salary for entry-level accountants.

The maximum salary for our more experienced examiners, in 1985 dollars, is $6,400 less than it was in 1975. For supervisory examiners, the differential is $7,400. The maximum salaries for nonsupervisory examiners ($41,105) and supervisory examiners ($48,876) are, in many cases, thousands of dollars below mid and senior level management salaries in credit unions and other financial institutions.

Our most experienced examiners often leave the Agency for much more lucrative positions in the private sector. In fact, because of inadequate salary levels, NCUA typically devotes substantial funds and other resources to developing a skilled, experienced examiner only to find that our Agency has served as a training ground for credit unions and others.

NCUA compiled data from exit interviews of 11 examiners who left the Agency between January and April of this year. Six of the eleven explicitly cited salary as the primary reason for their departure. One reported a private sector offer of "more money" and "better future potential." Another said he was receiving an immediate $8,000 salary increase from a credit union, a third reported a $10,000 increase, also from a credit union. Nearly all expressed dissatisfaction with NCUA's salary levels, and the fact or expectation that compensation would be greater outside the Agency.

In another survey which is still ongoing, NCUA has written to 79 examiners separated between January, 1984 and April, 1986. Excluded were those who retired or left under unfavorable circumstances. Thusfar, 29 responses have been received. Of these, 18 have indicated they left NCUA because of salary. We will be pleased to submit this survey to the Subcommittee when it is completed.

Another very common reason given for examiner resignations relates to the extremely heavy travel requirements of the position. It would be helpful to be able to pay specific benefits for travel exceeding a certain level. Another problem relates to the fact that many of our duty stations are "one of a kind", remote, or at least non-urban areas of limited appeal. It is often difficult to find people willing to accept these posts and once we do, it is very difficult, if not impossible to convince them to move. We are unable under present restrictions to provide incentives for working in less desirable duty stations and we are unable to provide financial incentives to move.

We have been pursuing limited administrative exceptions which might grant us partial relief from some personnel restraints.

However, these limited exemptions are extremely difficult and cumbersome to obtain and we would prefer the more comprehensive approach of Carper-Lundine.

Mr. Chairman, you asked whether raising NCUA's pay levels would cause state regulators to lose examiners. I'm not certain of the answer to that question. NCUA already provides greater compensation than many state programs, but we attract very few state examiners because of different entry requirements. In any case, we still believe NCUA ought to be free to adequately reward productivity and performance in order to retain a quality examiner staff.

We do have misgivings, Mr. Chairman, about the authority accorded to the Federal Financial Institutions Examination Council by the legislation. NCUA's experience has been that the Council, almost by necessity, is primarily oriented to banks and banking problems. We are pleased that the latest revision of Carper-Lundine does provide more of an advisory role for the Council, but we remain troubled by Section 6.

We believe serious questions of state's rights and dual chartering are raised by Section 6 which would establish minimum standards for state examinations of federally-insured institutions, including credit unions.

We believe it would be preferable for Federal and state regulators to work together to address common problem areas. In this connection, NCUA presently is working closely with the National Association of State Credit Union Supervisors on model examination forms and worksheets for both Federal and state examinations. In addition, we are sponsoring joint training sessions and recently have reached agreement with NASCUS on policies and procedures for joint exams of state-chartered, federally-insured credit unions.

Carper-Lundine also would exempt NCUA from a sequestration order under Gramm-Rudman-Hollings. We support this provision because we are seriously concerned by the potential adverse impact of this statute on credit union safety and soundness. Legally, it seems that NCUA is generally included within the statute's purview, except that the National Credit Union Share Insurance Fund is exempt with respect to "prior legal obligations." Therefore, despite the obvious need for more, not less, examiners, Gramm-Rudman-Hollings could actually compel NCUA to cut back on its examination force and program.

In the present year, fiscal 1986, the 4.3% cut mandated by Gramm-Rudman-Hollings translated into a $1.4 million reduction at NCUA. However, due to the fact that we are just now approaching full use of our budget, its impact has been minimal.

Next year, when we will be fully staffed to our budget allocation, the impact on NCUA could be severely damaging. Approximately 70% of our budget is devoted to payroll and 10% to travel, mostly travel by examiners. The remainder of the budget is for non-discretionary administrative expenses such as rent, communications, and utilities. Credit union examiners and examiner-support positions account for over 80% of our staffing. As a result, any significant reductions, such as a potential Gramm-Rudman-Hollings' sequestration of 15%, will have an immediate adverse effect on our ability to examine credit unions.

The only alternative available for NCUA to achieve a reduction of that magnitude would be through furloughs. Our experience in recent years has been that very little net savings can be achieved through reduction-in-force procedures. We have estimated that if a 15% reduction in the FY87 budget were accomplished through furloughs, approximately 35% of Federal credit unions would not be examined in FY87. In addition, our current initiatives to improve the quality of our examination program, principally through greatly increased training and educational programs, would have to be completely abandoned.

All federally-chartered credit unions are currently examined annually, a vital element in our efforts to maintain safety and soundness. Large scale employee furloughs would necessarily result in an immediate severe lengthening of the examination cycle.

Our experience with lengthening the examination cycle beyond one year has shown that the entire examination system soon begins to deteriorate.

For the period from 1977 through 1982, the examination cycle averaged as high as 24 months, and some Federal credit unions were not examined for 36 months or longer. The longer examination cycle resulted in a dramatic increase in insurance losses. We found that in many cases when an examiner returned to a credit union after 24 to 36 months the situation was terminal and many credit unions were liquidated or merged. Also, as a result of the longer examination cycle, credit union problems generally became more critical, and the number of classified problem-case credit unions peaked at 1,192 in 1982.

Mr. Chairman, under Gramm-Rudman sequestration the examination program would become a defensive process, with greater and greater amounts of effort devoted to dealing with a growing number of problem cases.

The laudable purpose of the Gramm-Rudman-Hollings Act is to reduce our national deficit. Reducing NCUA's expenditures will not reduce the national deficit. Therefore, it is illogical and unreasonable for the Gramm-Rudman-Hollings Act to apply to the National Credit Union Administration. We believe Congress ought to act now on this matter and not wait until the last moment when, or after, sequestration might take place.

In summary, economic change, substantial deregulation, and increased financial sophistication make it essential that agencies like NCUA have more, not less, independence if we are to recruit capable individuals for examiner positions, and, through training and compensation, develop and retain a highly skilled examiner work force.

We believe the Carper-Lundine Bill would enable NCUA to fully meet its statutory responsibilities while remaining fully accountable to the Congress, and to the credit unions we supervise and their members. Clearly, NCUA is a Federal agency and our employees are public employees subject to Congressional mandate, oversight, and legislation.

With regard to the "Truth in Savings Act", NCUA has indicated support for this measure in the past. We remain in support of this effort to ensure that consumers are as informed as possible about savings rates and fees of depository institutions.

I do not believe there is a serious problem of misinformation or confusion on fees and rates in credit unions. In preparation for this hearing, we surveyed each of our six Regional Offices on this subject. During 1985, the Regional Offices received 17 complaints from credit union members alleging misleading or deceptive advertising of rates or fees, non disclosure of fees, confusing information, and so forth. Thus far in 1986, 10 complaints have been received. Given the 46 million members of federally-insured credit unions, we regard these complaint numbers as extremely low. Since credit unions are member-owned and operated, most of the complaints were resolved internally to the members' satisfaction.

While we believe the standardization called for in HR 2282 would be of great value to consumers, there is a particular problem for credit unions that we must bring to your attention. I am referring to a basic distinction between interest bearing accounts at banks and savings and loans and the dividends paid by credit unions. NCUA's rule on credit union share accounts requires accurate representation in all advertising, disclosure, and agreements. However, since credit union dividends are based on available current and prior earnings, they may not, as a matter of law, be guaranteed in advance.

I am not certain how this credit union anomaly can best be addressed. However, NCUA's staff will certainly be available to the Subcommittee to help resolve the problem.

Thank you for the opportunity to present NCUA's views on these important bills.

I will be pleased to answer any questions you may have.

STATEMENT OF
ROBERT J. LAWRENCE
EXECUTIVE SECRETARY, FEDERAL FINANCIAL
INSTITUTIONS EXAMINATION COUNCIL

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE

OF THE

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

JUNE 4, 1986

Mr. Chairman and distinguished members of the Subcommittee:

I appreciate the opportunity to discuss the provisions of the Depository Institution Examination Improvement Act of 1986 as they relate to the Examination Council. The distinguished gentlemen on this panel who have presented their testimony addressed the questions in Chairman St Germain's letter. I plan to discuss the proposed legislation in the context of the Council's capabilities and its likely impact on the Council.

I. Introduction

The Examination Council, which was established by the Congress in the Financial Institutions Regulatory and Interest Rate Control Act of 1978, has been in existence for over seven years. The Council currently has twelve employees, all of whom are on loan to the Council from one of the five Federal agencies represented on the Council. None of these employees is involved in examinations of depository institutions. The Council, however, has access to considerable resources and expertise beyond its own staff. It has successfully drawn on the skills of the staffs of the five Federal agencies and has benefited greatly from the advice and counsel of its State Liaison Committee, which is made up of five State supervisors of depository institutions.

With this substantial access to resources and expertise, the Council has accomplished many things to attain the Congressional objectives set for it: to promote uniformity in the examination and supervision of depository institutions and to improve the overall supervisory process. Among those accomplishments are: a uniform financial institution rating system; supervisory policy statements encompassing a wide range of supervisory concerns; uniform reporting systems for depository institutions, including uniform instructions and public disclosure policies; the development, with the assistance of the State Liaison Committee, of policies on the exchange of supervisory information among the Federal and State agencies; and a Uniform Commercial Bank Performance Report and Screening System that are used by Federal and State bank regulatory agencies.

The Council is especially pleased with the progress of its examiner training program, which now offers 16 courses of instruction and will train about 2,500 examiners in 1986. Professional examiners, academics, and depository institution experts are used as faculty in the school. A professional educator heads the school, and the emphasis has been to develop advanced seminars that will take examiners to the frontiers of their particular specialties. Attendees at Council schools have consistently given the training program good reviews.

II. Council Responsibilities under the Act

The Depository Institution Examination Improvement Act of 1986 would involve the Examination Council in four broad areas: 1) conduct studies relating to appropriate compensation and employee benefits, including reimbursement while in travel status, for Federal depository institution examiners; 2) prepare proposals for consolidating, to the extent feasible and practicable, all programs for training Federal examiners and examiners of State agencies that want to participate; 3) conduct studies relating to the feasibility of establishing a graduate degree program in financial management analysis for agency employees; and 4) establish minimum requirements for State examinations of Federally-regulated or insured depository institutions.

Compensation and Benefits. The Examination Council and its staff have no special expertise in the development of employee compensation, retirement and other employee benefit programs. The personnel and other departments of the agencies represented on the Council, however, have such expertise, and the Council could approach this study in the same way other Council studies have been accomplished, namely, through the use of specialists provided by the agencies. The Council might also want to consider having overall direction of the study provided by outside contractors to ensure that the approach to, and conclusions of, the study are impartial.

The Council already has a project underway to consider ways to make working conditions for examiners more attractive. Among things being considered are limitations on the number of geographical transfers for examiners, reductions in travel, and methods for reducing the risk of the personal liability of examiners in connection with their work.

Examiner Training. The Examination Council already has the expertise for developing a proposal for consolidating, to the extent feasible and practicable, Federal examiner training. The Council's Manager for Examiner Education could develop such a proposal for the Council's review with the interagency staff group that regularly addresses matters relating to examiner education. Involvement of the Council's State Liaison Committee would also be essential in that the legislation contemplates the inclusion of State examiners from State agencies wishing to participate. The Council, therefore, already has in place the administrative arrangements and training skills built up over seven years of interagency training to develop the kind of proposal called for by the legislation.

Graduate Degree Program. For some time it has been generally recognized that advanced training in financial management and analysis for examiners was essential to their work and of benefit to their careers, given the growing complexities of financial markets here and abroad and the talented financial specialists and managers in the employ of depository institutions and other financial firms. The Council has addressed this need in part through its seminar program, and the individual agencies have also conducted such programs for their examiners. Some preliminary work on a graduate degree program has been accomplished by the Council, but a significant barrier to implementation of such a program is the agencies' resource limitations. The agencies cannot release examiners from their assignments for the extended periods required for attendance in a graduate degree program; and this situation likely will continue until some relief from staffing limitations is obtained. The Congress may wish to consider, therefore, delaying the submission date of a report on this issue from one year after date of enactment of the legislation to two or three years after. Such a delay would allow time for implementation of a consolidated training program, the content of which would influence decisions regarding the appropriate approach to establishing a graduate degree program. It would also provide time for the agencies to build their examination staffs to the point where some attendance in a graduate degree program would be feasible.

Minimum Requirements for State Examinations. Primarily because of its State Liaison Committee, the Examination Council would have the capability of developing minimum requirements for State examinations of Federally regulated or insured depository institutions. The State Liaison Committee has been very successful in fostering the cooperation of State depository institution supervisory agencies on a number of Council projects, particularly in such areas as the exchange of supervisory information among Federal and State agencies and in developing new reporting systems. Along with the expertise provided by the Council's interagency supervision staff group, it should be possible to develop the kinds of standards envisaged in the legislation and to secure the cooperation of the State regulators in implementing such a program.

III. Effects of Legislation on the Council

Given the Council's experience in the various areas addressed in the proposed legislation and its methods of operation, there appears to be no reason why the Council could not carry out effectively the responsibilities assigned by the legislation should Congress enact it. The Council traditionally has operated with a relatively small staff and presumably would continue to do so. The Council might want to expand its own staff somewhat because of the importance and magnitude of the projects involved. For example, the Council might want to have its own staff member serve as project manager for the compensation and benefits study and another staff member be manager for the project on developing standards for State examinations. Such an approach would help ensure steady progress on the projects and independent staff views on the issues. Also, there would be some impact on the Council's budget from the study of examiner compensation and benefits if the Council were to make use of outside contractors for the study.

While only a modest increase in the Council's staff would likely be needed to conduct the studies called for in the proposed legislation, members of the Subcommittee should recognize that, should Congress call for implementation of a consolidated training program, a significant increase in the Council's staff and budget would be required. Presumably, however, there would be offsetting decreases in the staffs and budgets of the agencies. Also, implementing a program to review State qualifications in connection with the minimum requirements for State examinations of Federally regulated or insured depository institutions would require a few additions to staff.

IV. Conclusion

Should Congress enact the Depository Institution Examination Improvement Act of 1986, the Examination Council could position itself to carry out the responsibilities assigned to it by the Act. The Council's experience in conducting studies on an interagency basis, its experience in conducting an interagency examiner training program, the contributions that the State Liaison Committee can make in fostering Federal and State supervisory agency cooperation, and the Council's ability to tap the highly skilled agency staffs in support of its efforts indicate that the Council could successfully carry out the mission assigned to it in the proposed legislation.

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TOBY ROTH, WISCONSIN

May 27, 1986

Honorable Paul A. Volcker
Chairman, Board of Governors
Federal Reserve System
20th and Constitution Avenue, N.W.
Washington, D.C. 20551

Dear Chairman Volcker:

On June 4 and June 5, 1986, the Subcommittee on Financial Institutions Supervision, Regulation, and Insurance will be conducting hearings on the most recent revision of the "Depository Institution Examination Improvement Act of 1986" introduced by Congressmen Carper and Lundine, and on H.R. 2282, the "Truth in Savings Act" introduced by Congressman Lehman. You or your designee are requested to appear before the Subcommittee on Wednesday, June 4, 1986 at 10:00 a.m. in Room 2128 of the Rayburn House Office Building to testify on these measures.

It would be particularly helpful if the following information and issues could be addressed in your testimony.

1. In your view, are the employees of your agency public sector or private sector employees?
Are the examiners in your agency public sector or private sector employees?

2. What specific salary and benefit provisions in present law are lacking in order to retain examiners in your agency?
Is it possible to keep financial institutions regulatory agency personnel subject to civil service pay scales, generally, but to provide certain limited exemptions where needed?

3. The Gramm-Rudman legislation only applies to the regulatory agencies when a sequestration order takes effect. Every effort is being made by the Congress to meet the FY 1987 budget deficit target of $144 billion. In the present situation, there is unlikely to be a sequestration order until October of 1987.
In light of these circumstances, where is the immediate necessity for taking examiners out from under Gramm-Rudman until other factors develop that may require such measures?

4. Will raising the pay levels of federal examiners cause state regulators to lose many of their examiners?

5. Is there a problem with turnover rates at your agency with personnel other than examiners? If so, please explain fully.

6. What would be your alternative to the approach taken in the latest version of the Carper/Lundine bill?

In accordance with the Committee Rules, please deliver 175 copies of your prepared statement to Room B303 Rayburn House Office Building twenty-four hours in advance of your scheduled appearance. Your statement in its entirety with be included in the hearing record and, if delivered as requested, the statement will be made available to all Subcommittee Members in advance of the hearing. To provide all Subcommittee Members with sufficient time for questioning, the oral presentation of your prepared statement must be limited to ten minutes.

Sincerely,

Fernand J. St Germain
Chairman

FJStG:dTv

Responses to Questions Posed in May 27, 1986
Letter of Chairman St Germain

1. In your view, are the employees of your agency public sector or private sector employees? Are the examiners in your agency public sector or private sector employees?

The Federal Reserve Board is best characterized as an independent agency of the United States, and as such its employees are public sector employees. While the Federal Reserve Banks, which employ substantially all of the System's examiners, are organized in corporate form and their shares are held by members banks, they act as instrumentalities of the United States and their officers and employees, in this capacity, carry out specific public functions under statutory authority.

2. What specific salary and benefit provisions in present law are lacking in order to retain examiners in your agency? Is it possible to keep financial institutions regulatory agency personnel subject to civil service pay scales, generally, but to provide certain limited exemptions where needed?

As I have noted above, Federal Reserve examiners are employed by the Federal Reserve Banks and thus are not subject to federal civil service laws. However, by policy we have kept the salaries of our Federal Reserve Board personnel consistent with federal pay scales. The same policy has also had some effects on the scale of compensation offered at the Reserve Banks. Thus, should the Congress provide more compensation flexibility to the other agencies than they now possess under laws governing the Federal civil service and the budgetary process, the System would view this action as providing guidance for its own policies.

3. The Gramm-Rudman legislation only applies to the regulatory agencies when a sequestration order takes effect. Every effort is being made by the Congress to meet the FY 1987 budget deficit target of $144 billion. In the present situation, there is unlikely to be a sequestration order until October of 1987.

   In light of these circumstances, where is the immediate necessity for taking examiners out from under Gramm-Rudman until other factors develop that may require such measures?

While it is true that the agencies only come under Gramm-Rudman as sequestration takes place, the agencies cannot ignore the potential for sequestration in setting their hiring and budget policies. The Federal Reserve too must be sensitive to these possibilities, since it is now voluntarily complying with the spirit of the Gramm-Rudman law. Thus, in light of the need to strengthen the supervision of depository institutions, additional compensation and budgetary flexibility, where needed, would promote a more effective set of employment and budget practices.

4. Will raising the pay levels of federal examiners cause state regulators to lose many of their examiners?

Certain states may already have lost some examiners to federal agencies because the current federal civil service pay scale substantially exceeds the pay levels for examiners in a number of states. The broader problem facing these states, however, is that their compensation levels are also not competitive with those offered in the private sector. Moreover, if employees in some states are not adequately compensated (adequate, from the standpoint of employee retention in the face of higher wages offered in the private sector or at other levels of government), this should not be permitted to interfere with the efforts of any federal agency to attract and retain qualified personnel.

5. Is there a problem with turnover rates at your agency with personnel other than examiners? If so, please explain fully.

While the Federal Reserve Banks are able to establish salary levels to meet the competition, we are experiencing increasing difficulties in retaining examiners, particularly in certain areas of the country. We are also losing some key Reserve Bank people to the private sector in other functions of the bank.

In recent years, the Board has also had a problem retaining experienced personnel. In particular, we have encountered difficulties in retaining attorneys, economists, financial analysts and secretaries. Many experienced employees in these job families are leaving the Board because they were offered substantially higher salaries and because they were unwilling to invest their future here when the prospects for salary growth are severely restricted.

6. What would be your alternative to the approach taken in the latest version of the Carper/Lundine bill?

As indicated in my testimony, the Board supports the main thrust of the bill with regard to providing the other federal supervisory agencies appropriate authority to compensate their examiners competitively.

ANALYSIS OF H.R. 2282

Prepared by the Staff of
The Board of Governors of the Federal Reserve System

H.R. 2282 would provide for a single regulatory agency to promulgate regulations on the advertising of interest-bearing deposits and on the disclosure of terms and conditions applicable to deposits and services routinely offered by depository institutions. The bill as written presents a number of significant issues.

Section 3. Section 3 requires the statement of a number of factors in "each advertisement, announcement, or solicitation made by any depository institution regarding the rate of interest which is payable on any account." The legislation appears to require the same mandated statements in all media -- newspaper, billboards, radio and television. The staff believes that such a requirement may inhibit advertising in various media such as radio and television where the time constraints inherent in short advertising spots may limit the information that can be provided. The bill should provide the flexibility to tailor rules to different media. This issue was raised in the Board's January proposals to amend Regulation Q advertising rules and flexibility was supported by the majority of commenters who addressed this issue.

- 3(a) -- This section appears to apply only to interest-bearing deposit accounts. Consequently, advertisements for demand deposit accounts may not be covered. Some advertisements for demand deposit accounts may be misleading. For example, an advertisement for "free checking" may be misleading when there is a minimum balance requirement to avoid service charges. Further, the scope of the disclosure provisions in section 4 of the bill appears to encompass demand deposit accounts. Consideration should therefore be given to also including demand deposit accounts within section 3.

3(a)(1) -- This provision would require the statement of an annual percentage yield ("APY") and the method by which interest is compounded. If the APY is required, the reference to the compounding method can be deleted. Compounding methods are reflected in the calculation of the APY.

3(a)(3) -- Advertisements would be required to state the frequency with which interest would be payable to a depositor. Inclusion of this information may "clutter" advertisements and is usually of little importance to depositors when viewing advertisements.

3(a)(4) -- Minimum balance requirements would be required to be stated. It is unclear whether the "minimum balance" required to be stated is that balance needed to open an account, avoid the imposition of penalties or service charges, or earn interest. The Board currently requires that member banks state in advertisements any minimum balance required to earn the advertised rate of interest.

3(a)(6) -- This provision mandates language to be used in advertisements concerning the presence of early withdrawal penalties and service charges. The staff believes the statement is too restrictive and overbroad in scope and would confuse consumers. Early withdrawal penalties are solely a function of time deposits and do not apply to transaction accounts. On the other hand, transaction accounts are subject to service charges which generally are not assessed against time deposits. The mandated statement would cause confusion by blurring these distinctions. Staff believes that a more generic statement such as "this account is subject to service charges" or "service charges on this account may reduce your yield" are more appropriate in an advertising context. Of the 66 commenters addressing this issue in the Board's January proposals, 55 supported use of a statement such as the first one quoted above, although several of these commenters expressed the opinion that the statement was not strong enough or sufficiently detailed. Current Board regulations require a statement concerning the early withdrawal penalty.

3(a)(7) -- This section would permit advertisements for accounts with maturities of less than one year to exclude APYs. If APYs are included, then a specified statement concerning the yield would be required. Staff recommends this section be deleted and flexibility provided to structure appropriate regulatory requirements. Exclusion of an APY for shorter-term time deposits would limit consumers' ability to compare deposits of various types. Further, the statement appears to be overly long and could be simplified.

- 3(c) -- This provision requires that written summaries of the information required by section 3 be provided on request. Staff believes this issue is more appropriately addressed under section 4.

Section 4. This section establishes detailed disclosure requirements as well as procedures for maintaining and disseminating the required information.

- 4(a) -- Under this provision, each depository institution would be required to maintain a written schedule of "all fees, charges, and terms and conditions which apply to each type of account and service routinely offered by such depository institution." A list of charges to be included in the schedule is also in the provision. Although the specified disclosure factors present no major issues, the staff is concerned that the scope of section 4(a) is broader than intended. The purpose of this bill is to provide consumers adequate information concerning their accounts. However, as drafted, section 4(a) appears to require inclusion of all routinely offered services, including those services involved in correspondent banking relationships and large commercial accounts in a single schedule. Even more retail oriented services may not be appropriate for inclusion in a schedule when they are not used by the customer receiving the schedules. The regulator charged with promulgating regulations under the Act should be given sufficient flexibility to make these distinctions, or, in the alternative, the bill should be amended to require separate schedules with information limited to particular types of accounts in each schedule.

4(b) -- This provision requires that the written schedule be given to all depositors, each potential customer, and any individual who requests it. Further, section 4(b)(2) would require a new schedule with an explanation of changes to be mailed to account holders not less than 30 days prior to the effective date of any change in the schedule. Written schedules of fees and prior notification of changes in such fees are important pieces of information which should be given affected depositors, however, the bill as written may, in fact, work to the ultimate detriment of consumers.

As in the case of section 4(a), the principles embodied in section 4(b) can be retained by allowing for separate schedules for each type of account. For example, depositors would receive a schedule of fees and terms and conditions that is relevant to their relationship with the bank. A depositor that does not have a transaction account with a depository institution would consequently not receive demand deposit disclosures. If depositors decide to use a service or open an account other than one that they have already received information on, the depository institution need only provide the necessary information at that time. Further, targeted disclosure would mean that only those changes relevant to the depositor would be provided to him. Consideration should also be given to requiring prior notification only of changes to an account relationship that are adverse to a depositor. Prior notice of adverse changes would permit depositors to take whatever steps they deem appropriate, such as changing their account, before the effective date of the change. We do not believe that such a concern is warranted where changes are favorable to a depositor, however. In such instances, a prior notification requirement would appear to only increase costs without any increased consumer benefit. (In a potentially analogous situation, Congress amended the Right to Financial Privacy Act to limit the scope of coverage of the Act due, in part, to an estimate that the cost of notifying all customers of their rights under the Act would be approximately $922 million.)

Section 5. This section authorizes the Board to promulgate regulations to effectuate the bill's provisions. It further requires that any regulations provide that APYs are calculated on the basis of a 365-day period. The staff believes this latter provision is unnecessary because it would not improve a consumer's shopping ability. APYs calculated through the use of uniform formulas, such as those contained in the current Board proposal, will produce the same rankings among institutions using different compounding methods as would APYs that have been "converted" to a 365-day basis.

- 5(b)(2) -- The grant of authority to make special rules for particular kinds of accounts should be broader than merely prescribing uniform rate calculation methods. Special flexibility may also be needed in determining the proper advertising and disclosure rules. Thus, for example, the Board's current proposal includes a requirement that ads for variable rate accounts state that the rate is variable. Such a provision may also be needed under this law and the Board should have sufficient flexibility to adopt it.
- The bill, as drafted, does not address the relationship between the proposed disclosure provisions and existing state laws. Since the bill would cover institutions already subject to state disclosure laws, it should clarify Congress' intention with regard to those laws.

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TOBY ROTH, WISCONSIN

May 27, 1986

Honorable Edwin J. Gray, Chairman
Federal Home Loan Bank Board
1700 G Street, N.W.
Washington, D.C. 20552

Dear Chairman Gray:

On June 4 and June 5, 1986, the Subcommittee on Financial Institutions Supervision, Regulation, and Insurance will be conducting hearings on the most recent revision of the "Depository Institution Examination Improvement Act of 1986" introduced by Congressmen Carper and Lundine, and on H.R. 2282, the "Truth in Savings Act" introduced by Congressman Lehman. You are requested to appear before the Subcommittee on Wednesday, June 4, 1986 at 10:00 a.m. in Room 2128 of the Rayburn House Office Building to testify on these measures.

It would be particularly helpful if the following information and issues could be addressed in your testimony.

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3. The Gramm-Rudman legislation only applies to the regulatory agencies when a sequestration order takes effect. Every effort is being made by the Congress to meet the FY 1987 budget deficit target of $144 billion. In the present situation, there is unlikely to be a sequestration order until October of 1987.
In light of these circumstances, where is the immediate necessity for taking examiners out from under Gramm-Rudman until other factors develop that may require such measures?

4. Will raising the pay levels of federal examiners cause state regulators to lose many of their examiners?

5. Is there a problem with turnover rates at your agency with personnel other than examiners? If so, please explain fully.

6. What would be your alternative to the approach taken in the latest version of the Carper/Lundine bill?

In accordance with the Committee Rules, please deliver 175 copies of your prepared statement to Room B303 Rayburn House Office Building twenty-four hours in advance of your scheduled appearance. Your statement in its entirety will be included in the hearing record and, if delivered as requested, the statement will be made available to all Subcommittee Members in advance of the hearing. To provide all Subcommittee Members with sufficient time for questioning, the oral presentation of your prepared statement must be limited to ten minutes.

Sincerely,

Fernand J. St Germain
Chairman

FJStG:dTv

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May 27, 1986

Honorable Robert L. Clarke
Comptroller of the Currency
490 L'Enfant Plaza East, S.W.
Washington, D.C. 20219

Dear Mr. Clarke:

On June 4, and June 5, 1986, the Subcommittee on Financial Institutions Supervision, Regulation, and Insurance will be conducting hearings on the most recent revision of the "Depository Institution Examination Improvement Act of 1986" introduced by Congressmen Carper and Lundine, and on H.R. 2282, the "Truth in Savings Act" introduced by Congressman Lehman. You are requested to appear before the Subcommittee on Wednesday, June 4, 1986 at 10:00 a.m. in Room 2128 of the Rayburn House Office Building to testify on these measures.

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Fernand J. St Germain
Fernand J. St Germain
Chairman

FJStG:dTv

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TOBY ROTH, WISCONSIN

May 27, 1986

Honorable L. William Seidman, Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Dear Mr. Seidman:

On June 4 and June 5, 1986, the Subcommittee on Financial Institutions Supervision, Regulation, and Insurance will be conducting hearings on the most recent revision of the "Depository Institution Examination Improvement Act of 1986" introduced by Congressmen Carper and Lundine, and on H.R. 2282, the "Truth in Savings Act" introduced by Congressman Lehman. You are requested to appear before the Subcommittee on Wednesday, June 4, 1986 at 10:00 a.m. in Room 2128 of the Rayburn House Office Building to testify on these measures.

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6. What would be your alternative to the approach taken in the latest version of the Carper/Lundine bill?

In accordance with the Committee Rules, please deliver 175 copies of your prepared statement to Room B303 Rayburn House Office Building twenty-four hours in advance of your scheduled appearance. Your statement in its entirety will be included in the hearing record and, if delivered as requested, the statement will be made available to all Subcommittee Members in advance of the hearing. To provide all Subcommittee Members with sufficient time for questioning, the oral presentation of your prepared statement must be limited to ten minutes.

Sincerely,

Fernand J. St Germain
Chairman

FJStG:dTv

FERNAND J. ST GERMAIN, RHODE ISLAND, CHAIRMAN

FRANK ANNUNZIO, ILLINOIS
CARROLL HUBBARD, JR., KENTUCKY
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U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
NINETY-NINTH CONGRESS
ROOM B-303 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6051

May 27, 1986

Honorable Roger W. Jepsen, Chairman
National Credit Union Administration
1776 G Street, N.W.
Washington, D.C. 20456

Dear Chairman Jepsen:

On June 4 and June 5, 1986, the Subcommittee on Financial Institutions Supervision, Regulation, and Insurance will be conducting hearings on the most recent revision of the "Depository Institution Examination Improvement Act of 1986" introduced by Congressmen Carper and Lundine, and on H.R. 2282, the "Truth in Savings Act" introduced by Congressman Lehman. You are requested to appear before the Subcommittee on Wednesday, June 4, 1986 at 10:00 a.m. in Room 2128 of the Rayburn House Office Building to testify on these measures.

It would be particularly helpful if the following information and issues could be addressed in your testimony.

1. In your view, are the employees of your agency public sector or private sector employees?
Are the examiners in your agency public sector or private sector employees?

2. What specific salary and benefit provisions in present law are lacking in order to retain examiners in your agency?
Is it possible to keep financial institutions regulatory agency personnel subject to civil service pay scales, generally, but to provide certain limited exemptions where needed?

3. The Gramm-Rudman legislation only applies to the regulatory agencies when a sequestration order takes effect. Every effort is being made by the Congress to meet the FY 1987 budget deficit target of $144 billion. In the present situation, there is unlikely to be a sequestration order until October of 1987.
In light of these circumstances, where is the immediate necessity for taking examiners out from under Gramm-Rudman until other factors develop that may require such measures?

4. Will raising the pay levels of federal examiners cause state regulators to lose many of their examiners?

5. Is there a problem with turnover rates at your agency with personnel other than examiners? If so, please explain fully.

6. What would be your alternative to the approach taken in the latest version of the Carper/Lundine bill?

In accordance with the Committee Rules, please deliver 175 copies of your prepared statement to Room B303 Rayburn House Office Building twenty-four hours in advance of your scheduled appearance. Your statement in its entirety will be included in the hearing record and, if delivered as requested, the statement will be made available to all Subcommittee Members in advance of the hearing. To provide all Subcommittee Members with sufficient time for questioning, the oral presentation of your prepared statement must be limited to ten minutes.

Sincerely,

Fernand J. St Germain

Fernand J. St Germain
Chairman

FJStG:dTv

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415
Office of the Director

RECEIVED
JUN 27 1986
Subcommittee on Financial Institutions

JUN 26 1986

Honorable Fernand J. St Germain
Chairman
Subcomittee on Financial Institutions
Supervision, Regulation and Insurance
Committee on Banking, Finance and Urban
Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. St Germain:

Thank you for giving us the opportunity to submit a statement for the record for the Subcommittee's hearings on June 4 and 5, 1986, on H.R. 3567. Our statement is enclosed.

Please let me know if we can be of any further assistance.

Sincerely,

Constance Horner
Constance Horner
Director

Enclosure

STATEMENT FOR THE RECORD OF THE
HONORABLE CONSTANCE HORNER, DIRECTOR
UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

for the

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS SUPERVISION,
REGULATION AND INSURANCE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

for a hearing on

H.R. 3567,
THE "DEPOSITORY INSTITUTION EXAMINATION
IMPROVEMENT ACT OF 1986"

JUNE 4 AND 5, 1986

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I APPRECIATE THE OPPORTUNITY TO PROVIDE THE VIEWS OF THE OFFICE OF PERSONNEL MANAGEMENT ON H.R. 3567, THE "DEPOSITORY INSTITUTION EXAMINATION IMPROVEMENT ACT OF 1986."

THE OFFICE OF PERSONNEL MANAGEMENT IS STRONGLY OPPOSED TO THE PROVISIONS OF H.R. 3567 THAT WOULD ESTABLISH A SEPARATE PERSONNEL CLASSIFICATION AND COMPENSATION SYSTEM FOR EXAMINERS IN DEPOSITORY REGULATORY AGENCIES.

IN THE LAST SEVERAL YEARS, THERE HAS BEEN A GROWING AWARENESS THAT THE GOVERNMENT'S PERSONNEL SYSTEM, WHILE IT MAY HAVE SERVED WELL IN THE PAST, IS NO LONGER ADEQUATE IN ATTRACTING, MOTIVATING, AND RETAINING THE KIND OF QUALITY

WORKERS THE GOVERNMENT NEEDS TO DO SOME OF ITS SPECIALIZED AND IMPORTANT FUNCTIONS. THE CONCERNS ADDRESSED IN H.R. 3567 WITH BANK EXAMINERS HAVE ALSO BEEN RAISED IN A NUMBER OF BILLS BEFORE OTHER COMMITTEES OF THE CONGRESS, DEALING WITH A VARIETY OF SPECIALIZED OCCUPATIONS.

THESE CONCERNS LED TO A MAJOR REVIEW OF THE PERSONNEL SYSTEM IN THE EXECUTIVE BRANCH, CULMINATING IN A DECISION BY PRESIDENT REAGAN THAT WE SHOULD MOVE FORWARD, IN A CONTROLLED, CAREFULLY MONITORED WAY, TO IMPLEMENT A NEW GOVERNMENTWIDE PERSONNEL SYSTEM. THIS NEW SYSTEM IS TO BE BASED ON THE DEMONSTRATED SUCCESS WE HAVE HAD WITH A SIMPLIFIED, MORE FLEXIBLE PERSONNEL SYSTEM WHICH HAS BEEN EXPERIMENTED WITH AT TWO NAVY DEPARTMENT LABORATORIES AT CHINA LAKE AND SAN DIEGO, CALIFORNIA, OVER THE PAST SIX YEARS.

THIS SYSTEM WOULD LINK PAY TO PERFORMANCE, BE COST EFFECTIVE, ALLOW THE ADJUSTMENT OF PAY RATES TO REFLECT LOCAL CONDITIONS, AND BE SENSITIVE TO THE MARKET. WE BELIEVE THAT THIS NEW SYSTEM WILL PROVIDE THE TOOLS FOR RESOLVING ANY PROBLEMS RELATING TO THE COMPENSATION OF BANK EXAMINERS AND THAT LEGISLATION SUCH AS H.R. 3567 IS THEREFORE UNNECESSARY. MOREOVER, THE ENACTMENT OF SUCH BILLS WOULD CONTRIBUTE TO THE FURTHER FRAGMENTATION OF THE FEDERAL PERSONNEL SYSTEM.

THIS NEW SYSTEM WILL APPLY INITIALLY ONLY TO EMPLOYEES NOW UNDER THE GENERAL SCHEDULE. AMONG THE BANKING REGULATORY EMPLOYEES, ONLY NATIONAL CREDIT UNION ADMINISTRATION, FEDERAL HOME LOAN BANK BOARD, AND FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION EMPLOYEES WILL BE COVERED. HOWEVER, WE BELIEVE THAT THE NEW PERSONNEL SYSTEM WILL BE SO SUCCESSFUL THAT IT WILL BECOME THE MODEL FOR THE OTHER BANKING REGULATORY AGENCIES.

IN VIEW OF THESE DEVELOPMENTS, WE URGE THE COMMITTEE TO ALLOW THE PRESIDENT'S PROPOSAL FOR A COMPREHENSIVE NEW GOVERNMENT PERSONNEL SYSTEM TO ADDRESS THE PROBLEMS OF ALL GOVERNMENT EMPLOYEES.

STATEMENT OF MR. JOHN E. MALARKEY
ON BEHALF OF
THE CONFERENCE OF STATE BANK SUPERVISORS
BEFORE THE
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
U. S. HOUSE OF REPRESENTATIVES

RE: H.R. 3567, THE "DEPOSITORY INSTITUTION
EXAMINATION IMROVEMENT ACT OF 1986"

JUNE 4, 1986

Mr. Chairman, members of the Subcommittee, I am John E. Malarkey, State Bank Commissioner for the State of Delaware and President of the Conference of State Bank Supervisors, on whose behalf I am filing this written statement for the record.

The Conference of State Bank Supervisors (CSBS) is the professional organization of state officials who charter, regulate and supervise the approximately 10,500 state-chartered commercial and savings banks of the nation. Created in the early 20th Century as a clearing house for the ideas of the state bank supervisors on common problems, CSBS has evolved into the major champion of our decentralized American banking and bank regulatory structures. In addition, the Conference has become the most significant single source of educational and research services aimed at strengthening individual state banking departments.

We are pleased to have this opportunity to file a written statement for the record regarding the "Depository Institution Examination Improvement Act of 1986" introduced by Congressmen Carper and Lundine.

Let me state at the outset that we support the "Carper-Lundine bill" and the principles it embodies.

The CSBS Accreditation Program

During the early 1980s, CSBS painstakingly developed a comprehensive state banking department performance accreditation program designed to recognize and enhance excellence in state regulation and lead to a reduction in duplicatory federal regulatory and supervisory activity over state-chartered banks.

The accreditation program has evolved as a result of long-standing CSBS policy. A large portion of the Conference's time is devoted to programs designed to strengthen state banking departments. CSBS for many years has encouraged departments to take the pulse of their procedures and policies through rigorous self-evaluations. Thus, the development of the current accreditation program is a logical extension of past efforts.

The education, self-examination and accreditation programs constitute CSBS's response to the changing role of state banking departments which are being called upon to assume more responsibilities in a highly volatile regulatory climate. The FDIC has already withdrawn from the examination and supervision of many state-chartered banks. The Bush Task Group report recommends further extensive withdrawals of the FDIC and the FRS from the examination, supervision and regulation of state-chartered banks and bank holding companies. The banking industry is pressing to reduce unnecessary redundancy in bank examination, supervision and regulation. Bank customers and the public in general deserve effective, yet less costly oversight protection. The twin goals of state/federal checks and balances and parity between state and national systems of banking and bank regulation, require greater state responsibility. All of these factors encourage further improvement, measurement and public recognition of state banking department capabilities.

The accreditation program involves a comprehensive review of the critical elements which assure a banking department's ability to discharge its responsibilities through investigation of its administration, finances, personnel policies and practices, training programs, examination and supervisory procedures and statutory powers. The process involves several steps:

* A state begins by evaluating itself using a comprehensive set of 100 performance criteria. If deficiencies in operations are identified, the department has the data it needs to guide its self-improvement and, if necessary, to persuade its state legislature to provide it with the wherewithall required to correct the situation.

* If and when the department's leadership becomes convinced that it meets program standards, it formally requests an accreditation review by CSBS. The Performance Standards Committee (PSC) establishes an accreditation review team comprised of current and/or former bank regulators having extensive experience at either the federal or state level. This highly professional evaluation team examines the department's capabilities, work-product and output in detail using the materials previously submitted as starting points to determine whether program standards have been met. At the conclusion of its evaluation, it submits a comprehensive report.

* The PSC then establishes an audit team to review the report and all other materials for consistency and to insure the overall discipline of the program. The audit team reports its conclusions to the PSC and if all conclusions are positive the department is accredited for a five-year period, contingent on annual review.

Illinois became the first state to be accredited under the CSBS accreditation program in December 1984. Iowa, New York and Pennsylvania have joined Illinois and a fifth state will be announced later this week. Numerous other departments are in various stages of the evaluation process at the present time.

By setting high standards, CSBS is supporting public interest goals of identifying highly competent state departments, strengthening the capabilities of state banking departments and achieving recognition that states can effectively discharge their responsibilities.

CSBS strongly believes that the maintenance of a viable, decentralized dual banking system requires the recognition of state banking departments and Office of the Comptroller of the Currency as the primary regulators of respective state and national banks. The Federal Reserve System (the "FRS") and the Federal Deposit Insurance Corporation (the "FDIC"), in keeping with their specialized roles, should exercise examination and supervisory responsibility only as extensions of and necessary complements to the primary regulators. CSBS believes there is no need for the FRS and FDIC to handle day-to-day regulation of state-chartered banks.

Such a reduction in the federal agencies' role in state bank examinations would eliminate unnecessary duplicative examinations, reduce expenses and allow the FDIC to increase its insurance reserves to protect depositors of failed banks. In addition, the FDIC's resources could then be used to better represent the insurer's interest in troubled banks. The release of Fed personnel and resources to pursue monetary policy goals would parallel those of the FDIC.

No federal agency undergoes a rigorous standards review comparable to our accreditation process. CSBS believes that once a state has completed this review and has been accredited, federal agencies should be mandated to accept the examination reports and findings of that state unless the agency can show cause why it should not. Of course, the FDIC would continue its presence in the examination and supervision of state-chartered problem banks to the same extent it had such a presence in national banks. We recognize the valid interests of the FDIC and the FRS in the supervision of state-chartered institutions, as mandated by their specialized roles.

Section 6 of the Carper-Lundine Bill

Section 6 of the Carper-Lundine bill would provide for federal acceptance of the examinations and reports of the state banking departments which meet federal minimum requirements set by the Federal Financial Institutions Examination Council (FFIEC). The criteria for review are to be developed in consultation with the FFIEC liason committee and the minimum requirements established may not exceed the minimum standards in effect for federal agenices. It would be helpful if the bill also specified that the federal standards should take into account and be generally compatible with existing accreditation procedures.

The "bare bones" procedures prescribed for the review process appear reasonable. Based on our experience, however, it may be overly ambitious to presume that a "full dress" review of all 53 states and territories could be conducted on an annual basis. Therefore, we would suggest that provision be made either to allow the Council to use a "short form" review where deemed appropriate or to conduct reviews on an alternate year basis.

CSBS also finds the procedures for notification and remedying of deficiencies to be reasonable. We are pleased that a three year delay in effectiveness has been provided with respect to subsection (g), so that federal agenices which now accept state examinations and reports may continue to do so until the initial review process has been completed. We believe that it might also be advisable to retain an individual federal agency's flexibility to continue to accept certain reports and examinations of a particular state where such has been provided for by specific arrangements agreeable to the federal agency. Certainly, CSBS welcomes the flexibility provided for by the special rules for accreditation of individual departments within a state and for limiting the scope of the notice to examinations of particular types of institutions.

Of critical importance to CSBS is the provision which mandates acceptance of state examinations of "financially sound" insured banks as conducted by states which have met the federal minimum requirements. This provision will go a long way toward removing the costly, duplicative examination burden now imposed on state-chartered banks. We strongly believe that the definition of a "financially sound insured bank" found in the bill should be expanded to include banks with a CAMEL composite rating of 1, 2 or 3. The primary regulator of an institution is best able to assess whether an institution can come back from difficulties or is doomed to continue a slide into insolvency. In practice, states regularly involve the FDIC in the review of 3 rated institutions which are truly not healthy. It is in the best interest of all involved to do so. At the very least, in deference to the FDIC's understandable concern over potential impact of large institutions on the fund, we would propose a compromise of mandating acceptance of reports and examinations of 3 rated banks with under $500 million in assets, in addition to those of all 1 and 2 rated banks.

Overall, we find the provisions of Section 6 to be a welcome move in the direction of recognizing the capability of state banking departments. We applaud the sponsors of this bill, particularly Congressmen McCollum and Roemer who serve on our Education Foundation Board of Trustees and our Performance Standards Committee respectively, and the chief sponsor of the bill Congressman Carper for his dedicated work on Section 6. For those of us who concentrate our efforts at the state level, the degree of recognition which this committee has afforded us under its current leadership is most gratifying.

Sections 2 and 3 of the Carper-Lundine Bill

Sections 2 and 3 of the Carper-Lundine bill remove several budgetary constraints from the federal bank regulatory agencies in order to assure continued quality bank regulation. CSBS strongly supports these provisions. Without adequate resources, neither federal nor state agencies can perform the vital tasks assigned them. In particular, FDIC budget constraints, imposed now, would be extremely poorly timed and might expose the federal government to harsh criticism.

The FDIC fund was created to protect depositors and, thereby, to promote the stability of the banking system. Banks have contributed to the fund for these purposes. Insured banks are the source of income for the FDIC, whether through the yearly insurance assessment or the investment income from the portion of the assessment placed in trust.

It is our understanding that the FDIC has voluntarily reduced its expenditures in keeping with the spirit of the Gramm-Rudman-Hollings Act ("GRHA"), in spite of a legislative history which clearly shows that the agency was to be excluded. The result has been a smaller, less experienced examination force, at a time when such can be ill-afforded. In addition, the Antideficiency Act, which allows Office of Management and Budget to apportion agency funds over a fiscal year, has been incorrectly applied to the FDIC in a manner which reveals an unfortunate disregard for the process of bank supervision and, when necessary, bank liquidation.

Meaningful supervision of banks throughout our country depends on a strong working partnership between state and federal counterparts. Even before the GRHA was enacted, state supervisory authorities were seeking to take responsibility for a larger share of the supervisory workload. This was spurred both by a desire for statutory recognition that states are regulatory equals involved in a cooperative supervisory effort and by a recognition that demands on the FDIC would increase as macroeconomic impacts showed up on the problem bank list.

The application of the GRHA and the Antideficiency Act to the FDIC at this time would send the wrong signal to the state legislatures, to the banking industry and to the public at large. State banking departments desire strong partners in bank supervision. Although CSBS is not in a position to make specific comments on national budgetary matters, we applaud the purposes of the Carper-Lundine bill and believe that its enactment would serve the public interest.

Conclusion

CSBS supports the "Depository Institution Examination Improvement Act of 1986." We believe that it will give added impetus to existing excellence in bank supervision and regulation at the federal and state levels. Ultimately, the public interest is best served by a dual banking system in which the cooperative efforts of sister agencies give added strength.

DEPOSITORY INSTITUTION EXAMINATION IMPROVEMENT ACT

TRUTH IN SAVINGS ACT

THURSDAY, JUNE 5, 1986

House of Representatives,
Subcommittee on Financial Institutions
Supervision, Regulation and Insurance,
Committee on Banking, Finance and Urban Affairs,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m., in room 2128, Rayburn House Office Building, Hon. Fernand J. St Germain (chairman of the subcommittee) presiding.

Present: Chairman St. Germain; Representatives Barnard, Lehman, Leach, and Wortley.

Also present: Representative Thomas R. Carper of the full committee.

Chairman **St Germain**. The subcommittee will come to order.

The Chair would like to state it is very difficult to anticipate what is going to be scheduled when, and we find ourselves in a situation this morning where one of the principal subcommittees of this full Committee on Banking has a bill on the floor, the housing bill. However, we also scheduled these hearings, and I have been asked by Mr. Wylie to apologize to the witnesses, and I do so on behalf of the other Members who find themselves torn. This is important, but the housing bill is also important. So if the attendance is not as full as you would like to have seen it, please understand it is often very difficult to schedule without conflicts.

At this time the Chair recognizes our colleague from California, Mr. Lehman, who is the principal sponsor of the Truth in Savings Act.

Mr. **Lehman**. Thank you, Mr. Chairman.

As the author of H.R. 2282, the Truth in Savings Act, I would like to extend my thanks and appreciation to the chairman for scheduling these hearings, and I regret my obligations during the California Primary election prevented me from attending yesterday's proceedings.

I have, however, reviewed the testimony presented yesterday and am confident the specific concerns expressed by the regulatory agencies regarding the legislation can be resolved. I am looking forward to hearing from today's witnesses with the same intent in mind.

Mr. Chairman, H.R. 2282 is a very simple bill whose concept is shared by the regulators, the industry and consumers alike. As we all know, the deregulation of interest rates and other changes in the financial services marketplace has created a new highly competitive arena, and while consumers have more choices in where and how to invest their money, they also have to be more knowledgeable in selecting the right financial institution and deposit instrument.

My bill, the Truth in Savings Act, demystifies this complicated and confusing process. It provides consumers and potential depositors with adequate tools to be able to compare options for the right account, and I look forward to working with you and your staff in perfecting this legislation.

Again, I appreciate yours and the committee's indulgence in this matter and am anxious for today's testimony. Thank you.

Chairman St Germain. Thank you.

At this time, we will place your entire statement in the record. This applies to each and every one of you. We will put your entire prepared statements in the record, without objection, and we will call upon you to either synopsize or just give us your version of your testimony, whichever way you would like.

[The opening statement of Congressman Lehman can be found in the appendix.]

Chairman St Germain. Our first witness will be Mr. Randall Killebrew, who is vice chairman of government relations for the American Bankers Association. Mr. Killebrew.

STATEMENT OF RANDALL A. KILLEBREW, VICE CHAIRMAN, GOVERNMENT RELATIONS COUNCIL, AMERICAN BANKERS ASSOCIATION [ABA]

Mr. Killebrew. Thank you.

Mr. Chairman and members of the subcommittee, I am Randall A. Killebrew, president of First National Bank in Petersburg, IL. I am also vice chairman of the American Bankers Association's Government Relations Council and an ex officio member of its community bankers council. Our association members include banks of every size, type and location and the assets of our members are approximately 95 percent of the industry total. I welcome the opportunity to present ABA's views on H.R. 2282, the Truth in Savings Act, and H.R. 3567, as amended, the Depository Institution Examination Improvement Act of 1986.

As to H.R. 2282, the Truth in Savings Act, the ABA strongly supports the goal of H.R. 2282—that is, giving consumers information with which to make meaningful comparisons of deposit accounts. With the expiration of the Depository Institutions Deregulation Act and the completion of deposit account deregulation under the provisions of that statute, the banking industry is free to design new deposit products in a way that has not been possible since 1933.

Elimination of Government-imposed ceilings on rates paid on savings has resulted in a variety of complex market-rate savings instruments. These new and better choices afford savers and financial institutions the opportunity to select options best suited to their particular needs.

The Federal Reserve Board and Federal Deposit Insurance Corporation [FDIC] have prescribed rules governing the advertisement of interest on deposits by banks. These rules provide the consumer a basis for making a comparison of various deposit accounts.

Our association supports the regulators in their efforts to assure meaningful and accurate information in the advertisements of all providers of financial services.

Our association is concerned that the provisions of H.R. 2282 are limited to depository institutions. This limitation does not take into account the vast changes in deposit account markets that have occurred with the advent of deregulation. Insurance companies, security firms, mutual funds and other types of nondepository institutions are active competitors with banks for the consumer's deposit dollar. It is necessary that all financial institution regulators adopt the same standards for advertising so that consumers may make comparisons of rates being offered.

The ABA has urged its members to take voluntary action on rate disclosure and other consumer concerns, and we will continue to do so. As a part of this effort, last year the ABA prepared a banker-action kit to help individual banks formulate a plan for their own institutions. The kit contains guidelines and rate disclosure advertising that are similar to the proposed guidelines of section 3 of H.R. 2282. We believe this kit is an effective addition to other industry initiatives in this area.

Under section 5 of H.R. 2282, the Federal Reserve Board would be required to prescribe uniform methods of calculating annual rates of simple interest and annual percentage yields. We believe this provision would be an unnecessary incursion into a detailed level of product design. Congress should not involve itself in formulas which are part of the infrastructure of a highly competitive market.

We further believe that the kind of rate disclosure outlined in our voluntary guidelines makes it possible to achieve the goal of H.R. 2282 without any interference in the way banks offer their products and services.

In sum, the banking industry is already subject to rate disclosure rules prescribed by the Federal Reserve Board and the FDIC. At the same time, our association is continually promoting rate disclosure on a voluntary basis. Consequently, we question the need for this proposed legislation. However, if H.R. 2282 is adopted, we believe that the bill should require the Federal Reserve Board to consult with its counterparts at the Federal Trade Commission and the Securities and Exchange Commission to devise similar advertising regulations for all types of deposit-like products.

H.R. 3567 as amended represents a significant step toward raising the standards of Federal banking supervision and increasing the ability of States to supervise their own depository institutions. The ABA recognizes the need of the Federal bank regulatory agencies to not only train their examiners but also to retain these highly trained individuals. Therefore, the ABA supports this proposed legislation.

H.R. 3567 as amended would exempt the regulatory agencies from the Gramm-Rudman-Hollings Balanced Budget and Emergency Deficit Control Act of 1985 and the Antideficiency Act. The banking agencies, in their efforts to identify and assist troubled banks, continue to be hampered by the artificial budgetary restrictions imposed by Gramm-Rudman-Hollings. Moreover, the Office of Management and Budget [OMB] has recently asserted vastly increased budget supervisory authority over these agencies.

While our association is strongly in favor of measures to reduce the budget deficit, we think it senseless and counterproductive to restrict the budgets of the banking agencies in the process. Not only are the entire budgets of the agencies paid by the banks they supervise, but the agencies are required by law to rebate a large part of any budget savings to these banks. Because the budgetary impact of the supervisory activities of the banking agencies is essentially nil, we urge this subcommittee to work toward providing an exemption from Gramm-Rudman-Hollings and OMB oversight for these agencies.

Our association has long advocated programs designed to enhance the pay and professionalism of the Federal bank examination force. We believe that H.R. 3567 as amended would go far toward achieving that goal, and we look forward to working with this subcommittee to achieve its ultimate enactment.

Thank you, and I would be glad to respond to any questions.

[The prepared statement of Mr. Killebrew on behalf of the American Bankers Association [ABA] can be found in the appendix.]

Chairman **St Germain**. Thank you.

At this time we will hear from Mr. Alan Fox.

STATEMENT OF ALAN FOX, LEGISLATIVE REPRESENTATIVE, CONSUMER FEDERATION OF AMERICA [CFA]; ON BEHALF OF CFA, CONSUMERS UNION [CU] AND THE U.S. PUBLIC INTEREST RESEARCH GROUP [US PIRG]

Mr. Fox. Thank you very much. This statement is offered on behalf of two other organizations, Consumers Union and the U.S. Public Interest Research Group, as well as Consumer Federation of America, and we appreciate very much the opportunity to testify on H.R. 2282, which embodies the principles of one of CFA's highest priorities, that of full, complete, comparable disclosure of all of the elements of financial services pricing.

Adequate information is essential to a fully functioning and efficient market. In the past, strict regulation of deposit accounts and other features of the market for financial services presented consumers comparing different accounts with a relatively straightforward task. Account terms varied little and competition between depository institutions and other providers of similar services was limited.

Today the terms, conditions and prices of deposit accounts are almost completely unregulated, and consumers are faced with a widening variety of bank-like services offered by a widening variety of institutions. For most consumers, however. the expansion of options has not been matched with the expansion of information necessary to evaluate options and make informed choices.

A market cannot operate efficiently if buyers of services are routinely unable to determine the prices and compare the value of competing services. Consumers today have a great deal of difficulty acquiring information, and greater difficulty comparing what information is available from competing institutions. The result is an inefficient market that fails to reward providers of the best values, fails to penalize deceptive behavior and fails to allow consumers to influence market behavior through rational purchasing decisions.

There are two general types of disclosure needed to allow consumers to compare account offerings: First, accurate and uniform disclosure of interest income on deposit accounts, and, second, full disclosure of all the potential costs of consumer accounts. Legislation such as H.R. 2282 must be drawn to provide consumers with the full picture about these accounts; accurate, concise, and comparable information on the cost and benefits of deposit accounts. The yield and income disclosures must take into account a number of methods designed to market deposit accounts which have made these disclosures more complicated, confusing and more susceptible to misleading advertisements.

We see in the market rates for time deposits of less than 1 year where a yield disclosure has to assume the deposit will be rolled over at the same rate. Accounts with variable interest rates linked to market indices, or, as we have been told by industry representatives, vary according to the judgment of bank managers. Introductory rates, tiered rate accounts on which different rates of interests are paid on different balances, and a variety of different combinations of different factors make comparison of the different yields on different accounts virtually impossible for most consumers.

But even full disclosure of interest yield no longer gives consumers a complete picture. That is because it is not net income to consumers. In recent years, disclosure of account fees has become important in evaluating accounts. The Federal Reserve Board has documented a doubling in the cost to consumers of bank fees in the period from 1979 to 1983. The Consumer Federation of America's annual surveys of accounts fees have revealed these increases are continuing, and we have submitted a copy for the record of our most recent survey which was released early this week which, among other things, indicated an increase in the cost to a consumer for moderate usage of small NOW accounts, increasing 13 percent from 1984 to 1985 and an additional 12 percent between 1985 and 1986.

In addition, there is one critical deposit account factor where variations in the factor cannot be handled simply through disclosure. When different balance calculation methods are used to determine interest payments, comparison between accounts becomes impossible. Unless consumers can predict their patterns of deposits and withdrawals, they cannot determine the effects.

We believe the only clear solution to this important problem is a legal requirement mandating the use of a single method for calculating all balances used to determine interest payments on deposit accounts. If balance calculation methods are not standardized, consumers will not be able to use the information disclosures to compare accounts.

We believe this solution is particularly appropriate now that all interest rate restrictions have been removed from consumer accounts. Many of these differences in balance calculation methods and other methods developed over the past years grew out of financial institutions' attempts to compete on the basis of price while they were limited by interest rate caps. Any observer of the market will say these attempts to get around caps were inefficient and distorted the market.

Now that these caps are no longer in force, it is time for banks and other financial institutions to compete, to the extent they will compete by price, on the basis of differences in rates rather than on artificial, distorted, and difficult-to-understand conditions, such as various balance methods. Standardizing methods will not limit competition, it will make competition meaningful because it will allow consumers to compare rates. We do not allow retailers to define weights and measures any way they wish, and we recognize variations in weights and measures do not promote but impede true competition. Balance calculation standardization would serve as the true weights and measures law of financial services.

Finally, we have been asked to say a few words about the Depository Institution Examination Improvement Act. Our concern in the consideration of this bill is that Congress not overlook elements of the examination system involving factors other than traditional safety and soundness concerns. Examinations for community reinvestment and consumer compliance are often short-changed by the regulatory agencies. Cutbacks in these examinations in some agencies predate cutbacks forced by the Gramm-Rudman-Hollings Act.

We believe these elements of examination are every bit as important to consumers as safety and soundness examinations. If Congress is to make improvements in the examination process, it must ensure those improvements are reflected in the Agency's consumer compliance and community investment responsibilities, as well as reflected in their safety and soundness responsibilities.

We would like to make two specific recommendations. First, section 6 concerning the minimum requirements for State examinations should clearly require State examinations to include, to the extent required by Federal law and regulation, examination of financial institutions community investment and consumer compliance performance.

State examinations must not be substituted for Federal examinations unless these factors are included.

Second, Congress should use this opportunity to instruct the regulators to give full attention to ensuring depository institutions meet their current reinvestment consumer compliance obligations. These obligations must no longer receive only the leftovers of the agencies' resources, and they must no longer be dropped from sight when safety and soundness problems grow. The agencies must be told, having been given all the tools they need to do their jobs, they must do the entire job, and we believe Congress should make such a statement in this legislation.

Thank you.

[The prepared statement of Mr. Fox on behalf of the Consumer Federation of America (CFA), Consumers Union (CU), and the U.S. Public Interest Research Group (US PIRG), can be found in the appendix.]

Chairman St Germain. Thank you.

Now we will hear from Mr. Jack Guildroy, appearing on behalf of the American Association of Retired Persons.

STATEMENT OF JACK GUILDROY, MEMBER, NATIONAL LEGISLATIVE COUNCIL, AMERICAN ASSOCIATION OF RETIRED PERSONS [AARP]

Mr. GUILDROY. The American Association of Retired Persons (AARP) is the Nation's largest membership organization, representing the interests of over 22 million members age 50 and over. The association appreciates this opportunity to express its support for H.R. 2282, the Truth in Savings Act, and to recommend improvements in this important legislation.

H.R. 2282 represents an important step toward maintaining consumer confidence in the banking system and ensuring that financial institutions are responsive to the needs of all consumers. The mandated disclosures constitute an essential tool to enable consumers to make effective choices among various financial services and providers.

AARP's interest in financial services issues comes about as a direct response to the deregulation of the financial services industry. While deregulation has increased competition, it has also created a great deal of confusion. Consumers lack the basic information they need to make prudent choices.

In order for deregulation to improve the efficiency of the financial services marketplace through enhanced competition, it requires informed consumers who can act rationally. Therefore, there is critical need for the ready availability of accurate, complete, up-to-date, and uniform information.

DISCLOSURE OF INTEREST RATES

We concur in H.R. 2282's requirement that the annual percentage yield [APY] and annual percentage rate [APR] must both be disclosed in advertisements, announcements and solicitations of deposit accounts. Each of these rates is important to different groups of consumers. For consumers whose balances remain constant for the entire year, the APY is important. For consumers whose account balances vary during a year, the APR, with frequency of compounding duly noted, is more meaningful.

In addition, H.R. 2282 should be amended to require that interest rate disclosures be contained in the schedule of fees, charges, terms and conditions. Such disclosure of interest rates on the mandated schedule is essential to meaningful consumer choice.

DISCLOSURE OF SERVICE CHARGES, FEES AND OTHER DEPOSIT ACCOUNT DATA

AARP supports the bill's provision mandating the ready availability in a written schedule of all other terms, fees and hidden costs. Such disclosures will be directly responsive to the needs of consumers for accurate and complete information. We urge the committee to specifically require that the information from the schedule also be made readily available to the public via telephone.

In addition to those fees, penalties and practices already included in the bill's required schedule, we urge the committee to include the following: interest rates [APY and APR]; frequency and method of compounding; check hold schedules——

Chairman **St Germain**. Excuse me, Mr. Guildroy. You are aware of the fact we reported that out of this committee, the check hold schedule, and it is now pending in the Senate. So rather than tell us about that, I hope your powerful organization is descending upon the Senate and informing them of the fact it is important to have the legislation which passed the House by such an overwhelming margin, adopted by the Senate, so it then becomes law.

Mr. **Guildroy**. We understand, and we are working on that this minute, this afternoon, if at all possible.

Charges for automatic teller machine transactions; charges for personalized service, including teller service; costs of checks and per-check debits; charges for cashing checks for noncustomers; charges for money orders, cashiers checks, and wire transfers; availability of direct deposit and its impact upon fees.

AARP, in conjunction with other major consumer organizations, has developed a standardized disclosure form which should be used as a model for the type of disclosures required. A copy of this form is attached to our testimony as appendix A.

In addition, we wholeheartedly concur in H.R. 2282's requirements that such fee schedules: One, be distributed to all account holders within 60 days of the effective date; two, report any changes in such schedule to customers at least 30 days before the effective date of such change; three, be given to potential customers before an account is opened; and, four, be given to the public upon request.

It is our firm belief that all material terms and conditions must be uniformly defined since they do not significantly affect the earnings of an account. To this end, the Federal Reserve Board should be required to provide uniform definitions and terminology as well as uniform methods for calculating interest.

In conclusion, AARP is pleased to comment upon H.R. 2282 and stands ready to work with the subcommittee toward markup of this important legislation.

Thank you.

[The prepared statement of Mr. Guildray on behalf of the American Association of Retired Persons [AARP] can be found in the appendix.]

Chairman **St Germain**. Next we hear from Ken McEldowney, director of San Francisco Consumer Action.

STATEMENT OF KEN McELDOWNEY, EXECUTIVE DIRECTOR, SAN FRANCISCO CONSUMER ACTION

Mr. **Mceldowney**. My name is Ken McEldowney, executive director of San Francisco Consumer Action. Consumer Action is a 15-year old consumer advocacy organization. We are a nonprofit membership organization, with 2,000 members throughout California. Our primary concerns are the consumer services of the telecommunications and financial services industries. We appreciate this opportunity to address the problem of disclosure practices in the financial services industry.

For more than a decade, Consumer Action has specialized in the production of comparative pricing surveys. The philosophy behind consumer pricing surveys is remarkably simple. We believe that the optimum functioning of the marketplace depends upon fully informed consumers who carefully and knowledgeably weigh choices. But marketplaces have ways of veiling, even hiding, real costs: the goal of the shopping survey is to cut through marketing slogans and pretty images to present clear comparisons of costs and benefits.

We conduct our surveys for two reasons: One, to provide consumers with the detailed information that they need to choose those accounts which will best meet their needs at the lowest cost, but, second, and equally important, to gather the data we need to spot problems with the industry. Today I want to focus on one of the major problems that we have uncovered, that of wholly inadequate disclosure of fee and interest information on the part of banks and savings and loans.

Chairman ST GERMAIN. Let me interrupt. I would like to ask a question of you and Mr. Fox. Yesterday I questioned the regulators about the surveys that they have conducted or the surveys they have not conducted. By the way, I would like to point out that it is so disappointing that yesterday the press table was jammed because the regulators were here, and today, the ABA must feel badly as well as the consumer people, because the press is prominent by its absence. I am amazed, because this legislation affects them and their families, and yet there isn't anybody there. There are two press people here, but yesterday that table was jammed. It is most disappointing.

Let me ask you, Mr. McEldowney and Mr. Fox, you conducted a survey that I quoted from yesterday from the press release that was put out where it says Consumer Action, as well as Consumer Federation, conducted this survey—your funding is rather minimal, isn't it, Mr. McEldowney and Mr. Fox?

Mr. MCELDOWNEY. Most of our funding comes from membership dues.

Mr. FOX. The survey, in fact, was conducted by approximately 20 organizations like Consumer Action of San Franciso, most of which have even less funding than Consumer Action. Most of the work was done by volunteer organizations.

Chairman ST GERMAIN. Did you find that this presented an enormous burden of paperwork? Were you overwhelmed by the paperwork involved in this survey, Mr. Fox and Mr. McEldowney?

Mr. FOX. Only to the extent that we were overwhelmed by the complex ways different institutions assess fees, some of which we didn't anticipate and, therefore, were not equipped to tell our members to look for.

Mr. MCELDOWNEY. We put out four major banking surveys a year. Each survey includes 80 to 90 different institutions. We cover credit cards, savings accounts, money markets, and we are able to put out that information, and we released the survey in April of 80 banks and savings and loans on money market and time deposits and were able to put out very weak information on 80 institutions in an 8-page tabloid.

Chairman ST GERMAIN. I think the Comptroller's Office and other regulators ought to hear you people. You know what they told me after the hearing? You got to realize we can't conduct these surveys because of the Paper Reduction Act.

Mr. Fox. As Mr. Guildroy pointed out, after a hearing at the Comptroller's Office several months ago—in fact, instead of the Comptroller's Office going and designing a disclosure form, they asked the consumer organizations to design such a form, and that is included within AARP's testimony.

Chairman St Germain. Frankly, that is probably a step—probably fortuitous. Sorry for interrupting you. I just had to determine how burdensome this survey was both in expenses and paperwork. It seems rather peculiar that your organizations can do this type of work, obviously without too much of a problem, but the regulators, even before Gramm-Rudman, were not able to. You may proceed.

Mr. Mceldowney. Thank you.

Chairman St Germain. Of course, you realize none of this will appear in the press because the press is totally unconcerned about it.

Mr. Mceldowney. The next comment I was going to make, which is in contrast to what you were saying, is that the public response in California to our surveys has been overwhelming. Media coverage by newspapers, radio, and TV is extensive, and the articles print along with charts and information, the fact that consumers can get the complete survey results by sending us a self-addressed stamped envelope, and last year we got nearly 20,000 requests from consumers who sent in self-addressed stamped envelopes which, in essence, is people saying the disclosure information they are able to get is really inadequate.

Certainly the two main problems we hear about banks and savings and loans are, one, about high rates and, two, they are unable to get accurate information.

When consumers seek information from financial institutions, they face a series of hurdles set up by an industry oblivious to the need for complete prepurchase disclosure. Brochures often ignore the potential for charges or merely indicate that unspecified fees may be assessed under certain conditions. Banking personnel often have a difficult time presenting clear and accurate answers to questions about banking practices.

We have found that bank personnel cannot answer the most basic questions. For example, what balance is required to avoid service charges on a regular savings account or what that charge is, can be extremely difficult to have answered accurately. In one instance, which I hope was an extreme case, we called four branches of the same bank to find out whether it offered a super NOW. Employees at two branches informed us that it did not have such an account. Employees at the other two assured us that they did.

One fact that is often particularly difficult to obtain is the annual yield on regular savings accounts—or any other kind of interest-bearing account. In many cases, branch personnel cannot give specific figures for the annual yield for their very own savings accounts.

For loans the consumer can look to the annual percentage rate to provide a standardized figure that incorporates all the finance charges connected with a loan. Using the APR, it is fairly easy for the consumer to compare loans offered by different institutions.

Unfortunately, no such figure exists for accounts which pay interest, such as NOW accounts.

Consumer leaders have long pointed to hidden factors that can affect the actual return a consumer will receive from an interest-bearing deposit account. The best known factor is compounding, the effect of which is usually handled by disclosure of the annual percentage yield.

But consumers have to consider more than just interest income. Interest yield is gross, not net income. In recent years, disclosure of account fees has become especially important in evaluating consumer accounts. For loans, the fees charged are factored into the APR. But for deposit accounts, such items as low balance penalties stand alone. A person expecting a return of 6 percent might never be warned that after fees have eaten into his account he will only receive 1 percent—or even lose money.

With deregulation has come yet another complication, tiering. Banks and savings and loans are moving toward accounts in which both service fees and interest rates change at various balance levels and vary depending on the amount you have in the institution. This has further hindered the ability of the consumer to compare accounts. 1986 was touted as the year in which small savers would finally benefit from banking deregulation. But this has not been the case. Instead, small savers are being hit by increasing service charges and bewildered by new accounts that may pay them less than their old savings accounts.

Our April 7 survey of 82 California financial institutions realized how high the stakes are for the average consumer.

One, at many banks, consumers with less than $2,500 in savings could get higher interest in a regular savings account than in a money market account. Money market accounts were designed as higher interest savings instruments with limited check writing privileges. However, many surveyed banks were paying 5.25 percent on MMA's with balances below $2,500 but 5.5 percent on regular savings accounts as of April 7.

Two, at about half of the surveyed banks, fees on MMA's with balances of $1,000 or less would exceed interest earned. Consumers who leave $1,000 untouched for a year could have net earnings that range from a loss of $90 to a gain of $70 at banks and a loss of $39 or a gain of $79 at S&L's.

With such variety in the marketplace, consumers need accurate disclosure information to ensure proper choice of accounts. It is clear from our surveying work and from consumers' experiences with inaccurate and incomplete information received from banking employees that voluntary disclosures have not and will not work. Voluntary disclosures cannot work because the information must be presented in a consistent format and with consistent terminology in order to allow consumers to make informed choices. Such consistency can only be mandated by regulation or legislation.

Disclosure of the fees and conditions associated with deposit accounts is essential to consumer comparative shopping and for the proper functioning of the market. Any legislation must require the following:

One, all fees must be revealed. In addition, other conditions, such as balances needed to earn interest and methods of calculating balances, must be disclosed.

Two, terminology must be standardized so that consumers will know that the use of a given term at one institution will mean the same as its use at another.

Three, the format of the disclosures must be in a form that is easy to understand and used by all banks and savings and loans. A simple, standardized chart would permit a consumer to readily compare different institutions. Special care should be taken to ensure accurate disclosure of fees and interest rates on tiered savings accounts and MMA's, including net earnings figures for specified sample balances.

One of the things that we are urging is in addition to the APY being disclosed that at certain account balances, such as $1,000 and $2,500, that a net earnings figure be disclosed so that consumers who are going to maintain that type of balance would know whether or not they were going to lose or gain money over the course of the year.

Adoption of these proposals would turn the financial marketplace into an arena where consumers would have a fair chance to select the products and services most appropriate for their needs.

Thank you.

[The prepared statement of Mr. McEldowney can be found in the appendix.]

Chairman St Germain. At this time, we will hear from Ms. Cathy Overly from the National Treasury Employees Union.

STATEMENT OF CATHY OVERLY, ASSISTANT DIRECTOR OF LEGISLATION, NATIONAL TREASURY EMPLOYEES UNION

Ms. Overly. Thank you for the opportunity to comment on the proposed Depository Institution Examination Improvement Act of 1986.

I am Cathy Overly, assistant director of legislation for the National Treasury Employees Union. NTEU is the exclusive representative for approximately 120,000 Federal employees, located nationwide. We represent all of the nonsupervisory FDIC employees located in the agency's headquarters in Washington, and all FDIC field examiners located in Chicago, New York City, and Boston.

NTEU supports the provisions of this proposed bill that permit the FDIC to establish regional pay rates for Federal examiners that are comparable to those enjoyed by people in similar positions in the private sector, and to permit the agency to use its discretion to establish other employee benefit programs.

As you know, the President's own pay agent has determined that Federal pay is almost 20 percent behind the private sector. In light of the gap between private and Federal sector pay, NTEU is confident that comparability will mean an increase in pay and benefits. NTEU believes all Federal employees should enjoy wage parity with the private sector, and has consistently attempted to convince Congress and the administration that comparability is not only necessary to attract and retain qualified people, but required under law.

We have reservations, however, about removing any Federal employee from coverage under the civil service retirement system. We oppose such a change because NTEU fears the integrity of the current system could be jeopardized if, through decreased participation, the base is significantly eroded. Furthermore, there is no assurance that an FDIC retirement system would be better than that currently available or soon to be available in the supplemental retirement system.

NTEU also supports the provisions in the proposed measure which will exempt FDIC from coverage under the Anti-Deficiency Act of 1974 and preclude the executive branch of the Federal Government from controlling the number of employees employed by the agency. It is important that the FDIC be permitted maximum flexibility in hiring and retention practices to meet the increasing demands on the agency's resources in this era of banking deregulation.

Finally, NTEU supports the provisions which exclude FDIC from coverage of the Balanced Budget and Emergency Deficit Control Act of 1985. The FDIC uses nonappropriated funds to meet virtually all of its administrative costs, which include personnel costs and employee benefits.

Common sense dictates that if, as in this case, funds are not appropriated from the U.S. Treasury to pay for an activity, that activity should not be subject to mandatory cuts pursuant to a law that purports to reduce the Federal budget deficit.

I must emphasize that NTEU believes it is imperative that the current Federal personnel systems, which affect almost all Federal workers, be scrutinized, and substantially modified, if necessary. With the exception of the proposed removal from the civil service retirement system, we support the provisions which affect the FDIC personnel system because they are a manifestation of what NTEU and others are attempting to achieve for all Federal workers; that is, a fair and reliable compensation package.

As a means of accomplishing that objective, NTEU is supporting H.R. 4738. That bill authorizes a variety of experiments throughout the Federal Government designed to generate and collect empirical data on different pay or personnel systems. The results of those experiments would, for the first time, provide Congress with a comprehensive picture of what works and what does not work.

NTEU is willing to address the FDIC's personnel system problems separately only because of the FDIC's peculiar status as a nonappropriated fund agency. Presumably, because the FDIC is funded primarily by user fees and investments, Congress has already seen fit to grant FDIC the power to establish a pay structure, insurance coverage, and other employee benefits separate from those permitted employees under the civil service system. As a result, the provisions under the proposed measure in this instance do not dramatically expand FDIC's authority under existing law.

NTEU opposes the retirement exclusion because the union fears the civil service retirement system could be undermined if present participants are removed, and there doesn't seem to be significant advantages to affected employees if they are removed.

While the employees covered under the provision in this instance are relatively few in number——

Chairman St Germain. I have to interrupt you at this point. You are speaking on behalf of NTEU, which, among others, represents how many FDIC employees?

Ms. Overly. I am not sure of the number. I think it is over a thousand. I am not sure.

Chairman St Germain. Out of 120,000?

Ms. Overly. Of the employees we represent? Yes.

Chairman St Germain. You have 120,000. Among those are the FDIC. How about the Comptroller's Office? Do you represent the examiners of the Comptroller's Office, as well?

Ms. Overly. We don't. We represent a very large number of Treasury employees, but not in the Comptroller of the Currency's Office.

Chairman St Germain. You say approximately a thousand FDIC employees; right?

Were they surveyed about whether or not they would like to have a separate pension system, retirement system?

Ms. Overly. We didn't survey these employees. We did not.

Chairman St Germain. You did not?

Ms. Overly. Did not conduct a survey. We have talked to our leaders in the chapters in FDIC and some of the employees there. In fact, their indication was, we like the pay proposal; we don't want to be under the GS schedule; but we don't want to be out from under the retirement system. They wanted to stay under the retirement system.

Chairman St Germain. Don't get me wrong, but the whole purpose of the legislation as drafted is to improve everything—the pay, the moving around, everything else. I think, therefore, it is safe to assume, I hope—do those people realize the purpose of considering the possibility of removing them from the Civil Service Retirement System, giving them a separate pension plan, would be to improve upon their pension? Did they realize that?

Ms. Overly. I think they understood that that was the intent. They were unclear about whether it would be an improvement.

Chairman St Germain. Wait a minute, now. The whole purpose of the bill is to achieve stability in this group of professionals so that after 3, 4, 5 years—after they are trained—they can go on to more desirable positions. The more desirable things are a better pay scale, less time away from home, and employee benefits, including a better pension plan. That is the whole purpose of the legislation.

That is why I find it hard to believe if somebody is going to offer me a better pension that I would say no. I better go see a psychiatrist. That is why I am a little taken aback at this opposition to this, without even knowing.

I think, if anything, your statement should state that we are opposed unless it is determined that indeed there is an improvement and it is a better pension system.

Ms. Overly. That remark is well taken. If we could see an example of what this is, and it was an improvement, we would obviously be in a position of wanting to support it.

We were really expressing more general concern, which is that the whole Federal sector is now in the process of trying to make some improvements in pay, and there have been a number of attempts to just take groups of employees and give them a lot of separate things. There is some general concern that if we do that, we might end up really selling a bad deal to some employees while others benefit.

As a general proposition, we would prefer to see most Federal employees in the same system. But I think your point is well taken. If we could see what this plan is, this is a small enough group of employees that there is I think, some room for doing something different for this group of people.

Chairman St Germain. Excuse me for interrupting.

Ms. Overly. As stated above, NTEU also supports the provisions which would exempt FDIC from coverage of the Anti-Deficiency Act, and thereby the control OMB is attempting to exercise over FDIC's budget and hiring practices. The Anti-Deficiency Act empowers the executive branch of the Federal Government with the authority to oversee the expenditure of Government funds by Federal agencies. This may be a valuable and necessary arrangement for those agencies which are spending money appropriated from the Treasury, but such action becomes an unnecessary and potentially harmful intrusion when an agency runs on nonappropriated funds.

The intrusion is unnecessary because the Anti-Deficiency Act's objective—to protect against spending which outstrips an agency's appropriated budget—is not applicable when the agency's budget consists of nonappropriated funds.

In addition, the intrusion of OMB into the FDIC's budgeting process could be harmful to the agency and to the integrity of the banking regulatory system at large. By limiting FDIC's administrative expenditures, OMB controls and potentially limits FDIC's hiring practices. In this time of banking deregulation, the FDIC should be building up its staff without artificial limits from OMB.

In summary, NTEU supports the provisions addressing the FDIC's personnel system, except the removal of FDIC employees from the civil service retirement system. The union also supports the proposed exclusions from the Anti-Deficiency Act and the Balanced Budget and Emergency Deficit Control Act.

[The prepared statement of Ms. Overly on behalf of the National Treasury Employees Union [NTEU], can be found in the appendix.]

Chairman St Germain. Thank you.

Mr. Lehman?

Mr. Lehman. Thank you, Mr. Chairman.

I want to thank all of the witness for their testimony today. It has been especially helpful.

Many of these consumer groups have helped work on this legislation. I appreciate having Mr. McEldowney from San Francisco, all the way to testify on this bill.

I think I will direct my questions toward Mr. Killebrew from the ABA. I saw a lot of constructive things in your statement this morning. I really do not think we are that far apart as long as we are all agreed on some basic principles.

I think, for instance, the criticism of the provisions in the bill with respect to advertising in the electronic media can be dealt with. I think there are problems there as far as the bill is currently drafted. I think we can work those out with more flexibility.

I do think there ought to be restrictions, however, on misleading use of electronic media, using that to get away with things you could not do in the print media.

I think you are probably right. The time restrictions you have, the nature of that method of advertising, means it has to be dealt with a little differently. However, on some other aspects in your testimony, I think you are missing the point of the bill.

Other than the requirement that all interest—that the APRs be based on a 365-day year, the bill really does not deal with the method by which institutions calculate interest for purpose of paying it and doesn't change any of your instruments at all. We are dealing with the method by which you advertise that interest to the consumer, in attempting to present the consumer with a uniform method of determining what is best. You can have whatever instruments you want.

Under this legislation, when you advertise it, we are asking you present it in a coherent, uniform manner to the consumer so they can make a fair comparison.

In the guidelines you set out, I see you attempting to provide a good measure of honesty within the industry and so as not to have dishonest ads. But I think you can be honest and still be misleading, even if inadvertently.

I think you missed the point there that what the consumer wants, and has been amply demonstrated by the witnesses, is an attempt to look at that and make a logical judgment.

Also, in your guidelines, in which you attach a copy of your statement, you state these depositors should be able to understand easily the relative merits of competing offers and intelligently choose the one best to suit their needs. However, I think the guidelines don't really provide the consumer with very much.

I could easily present you—in fact, if the staff would hand him a copy of that—with a comparison that meets your guidelines but leaves the consumer, I think, completely in the dark with respect to making an intelligent decision.

Under the paper I just presented you, there are two institutions offering an interest rate to the consumer, each for a savings amount of $6,000. If I could read them, account No. 1 would provide a 10 percent annual rate of simple interest compounded semiannually. For funds left on deposit for periods less than 6 months, the rate shall be 5 percent compounded daily, for a 10.25 percent annual percentage yield.

Account No. 2 provides an annual rate of 9 percent simple interest compounded daily coming out to a 9.42 percent annual percentage yield. Notice the account descriptions comply with your guidelines and that we have deliberately kept the examples simple by not including the average balance terms on those accounts.

Since you are an accountant—and a banker, rather—and have had a lot of experience, maybe you can figure out which is better really quick. Can you?

Mr. KILLEBREW. I am not an accountant.

Mr. LEHMAN. An experienced banker.

Mr. KILLEBREW. I am an experienced banker.

As far as looking at these two very quickly and responding to your question, I think I need a moment to digest the information a little bit as any consumer. It is very difficult in a very brief statement to——

Chairman **St Germain**. Mr. Killebrew, take your time. We will wait. You are now a customer of your bank, and you know customers come in and they don't spend 2 hours making that decision. They look for a little guidance. A lot of times, they don't get the guidance because, as we found out, on the ARM's and VRM's, way back then in California, if you called different branches of the same institution, everybody you spoke to gave you a different interpretation of what the ARM and VRM might cost you, as you went into the future.

In addition, on the NOW accounts, the survey by the San Francisco Consumer Action showed that calling different branches of the same institution, different people in that same branch gave you different answers as to whether or not they even had the accounts, let alone explaining the accounts.

Now, you are an experienced banker. We want to give you time now. You are the typical consumer, depositor. You are in there, in line. There are 30 people behind you, or 2 people behind you, waiting for you to make a decision, Mr. Killebrew. The clock is running.

Mr. **Killebrew**. Can I ask one question?

Being a consumer, am I there to leave my funds anticipating putting these funds out for a 12-month period of time or 6-month period of time?

Mr. **Lehman**. Let's say 10 months.

Mr. **Killebrew**. If I am there to have funds that I want to employ on a 10-month basis, the example No. 2, where I get an annual rate of 9 percent simple interest compounded daily, would be more attractive than a rate where, if I leave it there for a period—excuse me, a period of less than 6 months, the rate would be 5½ percent, be 5 percent compounded daily. If I am going to leave it there for longer than 6 months, the 10.25 in example 1 would be the best.

Mr. **Lehman**. Do you think an average consumer could make that comparison, as you just did, that meets the guidelines that you have set out?

Mr. **Killebrew**. First of all, I don't think the average consumer is put in a situation where he has to make that kind of judgment on that short period, that short a timeframe. Most of the customers that I deal with, they have given this a great deal more thought than coming in and surveying the rates.

Mr. **Lehman**. Let me hear your answer one more time.

Mr. **Killebrew**. My answer is that if I had $6,000 that I wanted to employ for 10 months, that I—and I was going to receive a 10-percent annual rate of simple interest compounded semiannually, that that would be more attractive than No. 2, which is a 9-percent rate of simple interest compounded daily.

Mr. **Lehman**. Our calculations are that the opposite is correct; that account No. 2 is better by $160 over that 10-month period. Account No. 1 would return $6,404.41 to the consumer at the end of 10 months, and the consumer's money would earn the higher 10-percent rate for only 6 months than it would earn the 5 percent compounded daily.

Chairman St Germain. The Chair is going to say we are going to suspend for a minute. I think you should have an opportunity to go through this whole thing with Mr. Killebrew. We have to vote. We have 3 minutes to vote. It is a very important amendment. Let's go vote and come right back.

The subcommittee will be in recess.

[Recess.]

Chairman St Germain. The subcommittee will come to order.

The Chair recognizes Mr. Lehman.

Mr. Lehman. Thank you, Mr. Chairman.

I hesitated a little this morning. I didn't want to embarrass anybody by bringing this out. That is not my intention. I think the little exercise we went through adequately demonstrates the fact that using the guidelines set out by the ABA, the consumer would have a real difficult time with a simple situation like that, figuring out what the interest rates are.

Here we have a banker who can't tell us what they are. The point is not the monetary difference in the two rates. The point is the difficulty with which you come to arrive at it. I think when a banker looks at it and can't tell you off the top of his head what the better account would be, they are going to have a tough time providing advice to consumers.

Worse than that, the consumer, on his or her own looking at advertising, is not going to have any way to make that kind of calculation.

You asked the right question, which most consumers might not ask, looking at those rates, which was: How long it would be? Once you decide you want the money in for 10 months, it is difficult from there given those guidelines to determine where you are going to get more money.

Mr. Killebrew. May I respond?

When I asked the question of how long we were going to leave the money on deposit, and you responded 10 months, I assumed I was buying a 10-month certificate of deposit, and not a 6-month certificate of deposit that would be renewed during the 10-month period of time.

Mr. Lehman. You just complicated it even further. Now the consumer has to make a choice on a different instrument that isn't even presented there in the advertising?

Mr. Killebrew. One of the things that deregulation has allowed the banking industry to do is to expand an array of products available to the consumer. The consumer can now choose an instrument that is more suitable to his or her particular need rather than having to take some regulatory mandated instrument and make it their need.

Mr. Lehman. That is precisely the point. How does the consumer tell which instrument meets their needs if they can't from the advertising?

Mr. Killebrew. Again, I would go back to this: If I were a consumer coming in to your bank buying a 10-month certificate of deposit, and it was issued——

Chairman St Germain. Excuse me.

Do you sell 10-month CD's?

Mr. Killebrew. I will sell one.

Chairman **St Germain**. Do you sell them right now? On CDs, 90 days, 6 months, 12 months, ordinarily?

Mr. **Killebrew**. Ordinarily. But for any specific request, we can write a 10-month CD. We can write a 15-month CD.

Chairman **St Germain**. Do you offer it on a regular basis?

Mr. **Killebrew**. If a customer requests it, we would honor their request. We do not quote that rate. In the rates we quote on a weekly basis, we do not quote the rate on a 10-month CD. We quote the rate on a 90-day——

Chairman **St Germain**. Recall your question to Mr. Lehman. How long will this be left on deposit?

Mr. **Killebrew**. In response——

Chairman **St Germain**. That doesn't sound like a CD to me.

Mr. **Killebrew**. The response was 10 months. If I was a consumer and wanted to buy—had some need to put this money out for 10 months, at the end of 10 months I was going to have a need for that money, had to have it back, the consumer goes in and asks for a 10-month CD, because he knows at the end of 10 months that he needs those funds. A 6-month CD was obviously not—would not fulfill his needs.

Chairman **St Germain**. Mr. Killebrew, how many 10-month CD's have you sold since we totally deregulated?

Mr. **Killebrew**. I have not sold many 10-month.

Chairman **St Germain**. How many?

Mr. **Killebrew**. Ten-month specifically? Probably none.

Chairman **St Germain**. Mr. Lehman, the ball is back in your court.

Mr. **Lehman**. Thank you, Mr. Chairman.

I think the point has been adequately made here. If the banks, looking at the advertising, can't explain to the consumer what the rate is, how can we expect the consumer to do it?

The point is, your guidelines, that description clearly met, simply do not do that. I would hope that you would look at that constructively. This is what we are trying to do with the bill—clear up the problem we just had. Your guidelines don't do that.

Mr. **Killebrew**. I think you will also find in our testimony that we indicate that we are supportive of any efforts to work against abusive advertisements or abusive interest rates that are put out that don't fully disclose the nature of the instrument.

Mr. **Lehman**. With respect to this voluntary compliance you have for those guidelines we just talked about, what steps are you taking to assure compliance, if any?

Mr. **Killebrew**. We have in our own institution—our internal auditor has the responsibility of checking against compliance for both truth-in-lending and making sure that the rates we are posting——

Mr. **Lehman**. Is the ABA doing anything?

Mr. **Killebrew**. As far as the ABA's efforts to assure compliance, I would have to check with staff. I am not familiar myself with those efforts. I would be happy to check with staff and see what efforts are being made.

Mr. **Lehman**. Has the ABA conducted any surveys of their institutions to monitor compliance?

Mr. **Killebrew**. The ABA has conducted a number of surveys concerning various aspects of this whole subject. Whether the compliance area was a part of that survey, I can't tell you.

Chairman **St Germain**. Excuse me.

I think you have a very competent, brilliant, intelligent, knowledgeable staffer here that wants to give you some information.

Mr. **Killebrew**. The ABA's position is that we are not in a position to enforce compliance. We are in a position to encourage compliance with the voluntary guidelines that we have promulgated.

Mr. **Lehman**. You have no idea how successful you have been in encouraging compliance?

Mr. **Killebrew**. No, sir; we know that the kit that was promulgated was mailed, widely dispersed within the industry. To what extent it is being utilized by individual banks, we do not have that information.

Mr. **Lehman**. It just seems to me that that demonstrates the level of your concern. Obviously, you can't enforce it. Obviously, you don't want it enforced or you would be asking for regulations or this legislation. You haven't monitored compliance with it.

How long have you had this voluntary compliance system, by the way?

Mr. **Killebrew**. The kit has been available about a year to the members, but I think one thing we are overlooking in this whole area is the fact that the Federal Reserve Board and the FDIC have promulgated regulatory guidelines on the advertising of rates on deposit accounts, and certainly all banks that are either under the Fed or the FDIC are subject to those guidelines, also.

Mr. **Lehman**. How many institutions have indicated to the ABA that they have complied with the ABA's guidelines?

Mr. **Killebrew**. The latest information is that about 25 percent of the banks have complied with it, and we continue to update the level of participation.

Mr. **Lehman**. So, 25 percent—that doesn't necessarily mean that 75 percent haven't complied. It means 25 percent have told you they have complied?

Mr. **Killebrew**. That is correct.

Mr. **Lehman**. Why wouldn't the others tell you they have complied, if they have?

Mr. **Killebrew**. They may not have just responded in a positive way, as far as saying whether they are or are not going along with the voluntary guidelines. I would go back to the fact that the guidelines established by the Federal Reserve Board and the FDIC are very similar to the ones proposed in the voluntary guidelines, and the FDIC could respond to what kind of abuses they are finding in the marketplace.

Mr. **Lehman**. Well, I guess my time is about up. I just want to say I think the testimony you have given today and the information put forth convinces me more than ever that we need this legislation. Not only are the existing guidelines inadequate and clearly do not provide the consumer with the type of information they need to make a decision, but the guidelines that are in place, we have absolutely no idea to what extent they are being complied with, if any, nor is the institution, the ABA, that promulgated them, doing anything to find out whether or not they are.

Thank you, Mr. Chairman.

Chairman St Germain. Mr. Wortley.

Mr. Wortley. Thank you, Mr. Chairman.

Mr. Killebrew, I guess this line of questioning looks like they are trying to beat up on you. I must say this: With the packaging of the commodity, of the service, advertising designs, marketing techniques, they do make it extremely complicated for the consumer to know exactly what he is getting out there.

I think this is very worthwhile legislation that is perhaps long overdue. I hope you do not personally take offense to the fact that you are the butt of this cross-examination. Nevertheless, I am glad I am not sitting in your chair.

Let's move on to some other aspects of it. Yesterday, the FDIC Chairman Seidman testified that the Federal truth in savings legislation could possibly expose the industry to significant costs similar to the truth-in-lending compliance.

Do you really see any significant costs involved in this legislation?

Mr. Killebrew. Mr. Wortley, first of all, let me thank you for the kind words.

I don't—our goal is similar to Mr. Lehman's and the other people here at this table—to provide the consumer with adequate information to make a determination.

One of the things that I think we need to return to is the fact that we, as banks and savings and loans, are not the only one competing in this marketplace. We have a lot of nonbank competitors that are not subject to this, either the current guidelines or the proposed legislation. We will not have true disclosure until all people—all institutions competing in the arena are subject to the same guidelines.

Now, more specifically to your—the cost estimates—it is very difficult to come up with a hard dollar cost. But there certainly is cost—cost is a factor: cost in the form of having notices printed and the printing costs involved with that, cost in the form of postage to deliver those notices to the consumer as prescribed by the legislation. As to how significant this cost might be and the exact dollar amount, I have no way of estimating that.

Mr. Wortley. Let me go over to Mr. Fox.

Wait a minute. Mr. Killebrew, I guess both of you might try this question.

H.R. 2282 requires a mailed notice to every customer of any change in the schedule of fees, charges, terms, and conditions in the account. Bankers suggest this provision be amended to require notice only of changes which are less favorable to the consumer.

Mr. Fox, do you see anything wrong with this modification?

Mr. Fox. It is often very difficult to determine what it means as far as a modification being more favorable or less favorable to a consumer. We have seen a number of modifications in account fees and terms that would affect different consumers in different ways.

For example, when a required balance level is changed in one direction and the fee for failing to meet the balance requirement is changed in the other direction, some consumers will benefit; some will not.

Financial institutions of all sorts are in regular contact with their customers through statements which are generally monthly statements, and they use that mechanism to send consumers all sorts of information. I receive a lot of third-party advertising in my bank statement today. I think that is a growing trend. Clearly, they have the ability to use the monthly statement system to let consumers know about all changes in bank fees, terms and conditions, whether favorable, unfavorable, neutral or mixed, in effect.

Mr. **Wortley**. Mr. Killebrew, why wouldn't you want to notify people that you had improved the conditions? I would think in this age of marketing that you would want to take advantage of that fact.

Mr. **Killebrew**. Well, I think——

Mr. **Wortley**. A bigger piece of the pie by showing them what you are doing.

Mr. **Killebre**[illegible]ese are very complex issues, many times. To continue to bo[illegible]d the customer with a series of complex changes sometimes c[illegible]ly add to the confusion as much as helping clarify.

Mr. **Wortley**. We sure do have a lot of stuffers.

Mr. **Killebrew**. They certainly are. We do not use as many stuffers. We do not use the third-party stuffers, either, in our own bank, as far as advertising for third parties.

Mr. **Wortley**. It might help to defray the cost.

Mr. **Killebrew**. We support the fact that the customer has a right to know and a need to know. Any time he requests that information, it should certainly be available to him on request.

The fact that we need to notify all customers of each change is questionable in our mind.

Mr. **Wortley**. Mr. McEldowney, your testimony surprised me just a little bit. You indicated that consumers have not benefited from the interest rate deregulation.

Are you subtly telling us you are in favor of going back to the old days of regulation Q?

Mr. **McEldowney**. No. I think what we are mostly concerned with are the problems of low- and moderate-income consumers. The Federal Reserve figures of 1983 indicate that about 40 percent of consumers have less than $1,000 in liquid assets. When we did our April survey, we really saw what was happening to consumers who had $1,000, $2,500 to be able to put into a savings account or money market.

I think the thing that we found, which we were very surprised, was that they were able to get higher interest on an old-fashioned passbook savings account than they were on a money market account. In an amazing number of instances, people who had their funds in a money market account would end up losing money over the course of the year because the service fees would be higher, in many cases considerably higher, than any interest that they would earn.

I think that is why we are stressing the need for disclosure that will factor in not only the different ways of calculating interest, but also factor in the fees so that consumers can, in fact, pick those institutions where they will be able to get significant interest.

Mr. WORTLEY. We used to have the Gray Panthers and everybody else up here picketing, demanding the removal of rate ceilings. It comes as somewhat of a shock when you indicate that you do not think removing regulation Q has been as beneficial as most of us had thought.

Mr. McELDOWNEY. I think for low and moderate income consumers—let me step back for a second.

It is the way that the banks and savings and loans have reacted. Part of the problem is that they have historically not really known what the cost was of providing certain services. What they have done with deregulation, we believe, is to overreact. So, you have a situation in which the cost to an institution of a savings account and a money market account have to be relatively comparable.

But we found that the fees on the money market accounts were seven, eight, nine times as high as on savings accounts. So, it is not so much the result of deregulation, but the decisions of the banking industry and savings and loan industry, that have been made in reaction to. Combined with that, I think, is certain tendencies among certain institutions to move toward up-scale banking, in terms of not caring that much in terms of the impact—maybe not even wanting customers with low and moderate incomes.

Mr. WORTLEY. Thank you for your observations. My time has expired. I could go on. You want to complete your telephone call? I will carry on.

Chairman ST GERMAIN. I haven't even started.

Mr. WORTLEY. Whatever.

Mr. Fox, in H.R. 2282, it requires simple interest rate and the annual percentage yield be included in all the advertisements. Isn't it the annual percentage yield and not the simple interest rate which actually reflects the investor's return?

Mr. FOX. In most cases——

Mr. WORTLEY. Wouldn't that be somewhat more relevant?

Mr. FOX. In most cases, the annual percentage yield is the most important. In our testimony, and in comments submitted to the Federal Reserve Board, we called for a revision in the regulations so that the APY is more prominently displayed in advertisements, and the annual rate of simple interest scaled down.

Mr. WORTLEY. I think the two rates kind of confuse people.

Mr. FOX. I think they do. However, as Mr. Guildroy noted, there are circumstances under which the annual rate of simple interest is more meaningful to consumers. That is in a—particularly in a transaction account where money is not left on deposit to accumulate over a period of time, but where the balance fluctuates around an average that presumably stays fairly constant; in other words, where in effect the consumer spends the interest with other money being spent.

In that instance, the annual rate of simple interest is of greater value to the consumer, and therefore ought to be available.

I certainly agree with the observation the APY is generally the most important figure, and again we have called for more prominent display of the APY. We still believe the annual rate of simple interest ought to be disclosed, but to disclose it with equal prominence to the APY is probably misleading.

Mr. **Wortley**. Let me go back to Mr. Killebrew for a moment, following up on a point you made.

Your competition out there is not just other banks when it comes to interest. On page 2, you make the point if Congress adopts truth in savings legislation, it should apply to nondepository institutions as well, such as insurance companies, security firms.

Who do you think will regulate and monitor the compliance of this act for those nondepository firms?

Mr. **Killebrew**. This is an area out of my expertise. I would assume——

Mr. **Wortley**. The Federal Reserve?

Mr. **Killebrew**. The Federal Trade Commission, the Securities and Exchange Commission, whoever regulates.

Mr. **Wortley**. The regulator?

Mr. **Killebrew**. For each institution.

Mr. **Wortley**. Insurance companies aren't regulated.

Mr. **Killebrew**. That is true.

To give you an example, I have here the business page of the Chicago Tribune from last weekend. Most of the ads are from nonbanks and nonsavings and loans. The one bank ad that quotes rates is an interest rate update, and it has rate and yield and varies due to weekly rate change. They have the annual percentage yield and annual percentage rate, and it spells out in detail minimum balance requirements and et cetera.

Again, under current regulation, as promulgated by the Fed and the FDIC, this is very close to what everyone was saying here this morning was needed. That is already in place. But when you look at some of the other ads that we are competing with you get this type of thing that does not state the yields in annual percentage yields. This is where we get a lot of the confusion with the consumers.

I would propose to you that to avoid this kind of confusion—the confusion is there. I do not deny that. We, as bankers, are frustrated by this as much as the people in the consumer groups. We are competing against entities that are playing with a different set of rules than we have to play with.

Mr. **Wortley**. I think everybody is frustrated. That is the reason we need this legislation.

Mr. **Killebrew**. And it certainly needs to go beyond the—as we state in the testimony, that it needs to go beyond the regulated financial institutions.

Mr. **Wortley**. Very good point.

Thank you, Mr. Chairman.

Chairman **St Germain**. Thank you.

I can't disagree with you. The only problem I have is, in talking to the staff, a jurisdictional one. But the fact that we can't solve all the problems of the world, should that mean we shouldn't try to solve some of the problems of the world?

Mr. **Killebrew**. I am again not an expert in this area. I would hope some way it could be worked out with other committees that do have jurisdiction.

Chairman **St Germain**. If we can do it. We have done it in the past. We have secured it. I am willing to try.

Mr. **Killebrew**. We are willing to support you in those efforts.

Chairman St Germain. Mr. Killebrew, do you feel voluntary guidelines of the ABA that you have been citing are better than the regulations that have been promulgated by the regulatory agencies as far as the informing of the consumer is concerned?

Mr. Killebrew. The regulations, as promulgated by the Federal Reserve and FDIC, and the voluntary guidelines, as proposed by the ABA, are very similar.

Chairman St Germain. You don't feel the guidelines go a little further and are a little more informative and more helpful to the consumer?

Mr. Killebrew. I do not think that one—the guidelines, as promulgated by the ABA, versus the regulations as established by the Federal Reserve and the FDIC—that one is better than the other.

Chairman St Germain. But you think they are both good?

Mr. Killebrew. I think they are both—help go a long way towards achieving what we have heard here this morning that needs to be accomplished.

Chairman St Germain. You feel voluntary guidelines are a good starting point?

Mr. Killebrew. Yes, sir. But, until other industries join in that type of disclosure, it is not going to be the complete answer.

Chairman St Germain. Right.

My question is, as far as financial institutions, depository institutions, you feel voluntary guidelines are a good starting point?

Mr. Killebrew. Yes, sir.

Chairman St Germain. Of course, they are voluntary. Therefore, it is impossible for the ABA to require compliance because of the fact that they are voluntary.

What would the ABA think if we were to perhaps look seriously at putting the guidelines into statutory form, since they were worked out by the ABA?

Mr. Killebrew. Well, we would prefer as an industry not to have yet another level of legislative layering on us.

Chairman St Germain. These are the guidelines that you espouse, that you tell us all about here in your testimony. We have these voluntary guidelines.

Now, you would object to putting those guidelines into statutory form?

Mr. Killebrew. We already have some 12 or 13 various consumer legislative acts that we are attempting to cope with on a day-to-day basis. If we had to have legislation—and I am not saying that legislation is necessary—but if we had to have legislation, legislation along the lines of the voluntary guidelines would be preferable to what is proposed.

Chairman St Germain. Let me ask you this: Has your institution voluntarily adopted the guidelines?

Mr. Killebrew. We make every effort to disclose any information that the consumer requests from us. Any consumer request that comes in, we attempt to handle it by an officer, or personnel, someone more senior to a teller or a new accounts clerk, in order to provide the information.

Chairman St Germain. Mr. Killebrew, don't go off in that direction. I will have to go back to Mr. Lehman's question. You were hoisted on your own petard. Let's go back to the question I just asked you.

Has your institution adopted the voluntary guidelines of the ABA?

Mr. **KILLEBREW**. Yes, sir.

Chairman **ST GERMAIN**. That is all I wanted to know, a simple answer.

However, we are also told that at last count, 25 percent of the commercial banks who belong to the ABA had adopted the guidelines. Let's say now another 5 percent may have adopted them, or even 10. That is 30, 35 percent. But, since you adopted them, you must feel from the way you are talking that you want to be as helpful to the consumers as possible.

You must feel they are pretty good guidelines.

Mr. **KILLEBREW**. We, quite frankly, think it is good business to have good relations with our customers.

Chairman **ST GERMAIN**. I don't think we could get an officer of a commercial banking institution who would sit where you are sitting and not say the same thing. I don't think any of them are looking to have bad relations with their customers. That is how you build a business.

The reason I ask the questions I have been asking is if those guidelines promulgated by the ABA and written by the ABA are good, then don't tell me about the lists of compliances you have to have by statute. You just finished saying you want to have good relations with your customers. These guidelines enhance good relations with your customers, and all bankers want good relations with their customers, and the ABA has written these guidelines. They couldn't be too burdensome.

Don't you think it would be a good starting point, if we feel we have to do something statutorily to encourage the other 60, 65 percent of the members of the ABA to adopt guidelines, to do it by statute. Would that be helpful?

Mr. **KILLEBREW**. I guess my response would be that I would assume that 100 percent of the banks are complying with the FDIC and Federal Reserve regulations.

Chairman **ST GERMAIN**. That is not my question.

Mr. **KILLEBREW**. If we have to go beyond the regulatory efforts that are already in place and there is a need for legislation, then the ABA guidelines would be an excellent model to start from.

Chairman **ST GERMAIN**. I don't want to put you on the spot, Mr. Killebrew, because you have to go back and face all those wonderful colleagues of yours. I am going to help you out here, I am going to say to you why don't you have a formal answer to that question prepared by the intelligent, resourceful, wonderful people at the ABA. That way we won't make it Mr. Killebrew who is carrying the load. We will have the ABA hierarchy do this for you.

Mr. **KILLEBREW**. We would be glad to give that consideration. I do not have the capacity to make policy for the ABA at this point.

Chairman **ST GERMAIN**. You have done a great job for them.

Mr. **KILLEBREW**. Thank you.

Chairman **ST GERMAIN**. Mr. Carper.

Mr. **CARPER**. Thank you, Mr. Chairman.

I want to welcome each of our panelists before us today and thank you for your comments. I especially appreciate the comments of Mr. Killebrew on the bill that many of us have cosponsored. I would like to pursue just very briefly with Ms. Overly some of the comments she had pertaining to our examination bill, and I appreciate your comments in support of most of the provisions of the bill.

And what I would like to do is just explore with you the concerns you have expressed about pulling certain employees out of the civil service retirement system. I would say that that is a point that we have not decided on yet, the earlier drafts of the legislation have removed them from the civil service retirement system with the option of doing what the Federal home loan bank has done, set up a separate retirement system. We don't have a closed mind on that particular issue.

I just want to ask a couple questions, and maybe have a brief dialog on that point. My understanding of the civil service retirement system is that it is not a fully funded system. It is a virtually pay-as-you-go system. For every $5 that are paid as an annuity to a retiree, $4 come from directly from the Treasury as a direct appropriation; $1 of the $5 comes from a contribution made previously or currently by an active employee.

I just wanted to share that with you and ask, were you aware of that?

Ms. OVERLY. Yes; I am not sure of the percentages off the top of my head, but there is the employee contribution and the agency contribution, which in this case I assumed FDIC makes out of non-appropriated funds. But the funding of the general fund, there is a very significant proportion that comes each year out of annual appropriations. So it is funded also by annual appropriations.

Mr. CARPER. There was a serious concern expressed a few years ago when we were trying to figure out how to bail out Social Security, and we decided that newly hired Federal employees would have to participate in a new system. And concern was expressed among the older employees that this would undermine the safety, the health and welfare of our old civil service retirement system. And as we looked at it more closely, we found indeed most of the moneys paid out in benefits is appropriated on a pay-as-you-go basis.

Having said that, nonetheless, we would like to explore the concerns that you have expressed, maybe not do so here today, but to have an opportunity with perhaps some discussions with Helen Wiederhorn of my staff and some other people who worked very diligently on this legislation. We will see if we can't satisfy your concerns as well as our own.

Ms. OVERLY. We would welcome that opportunity.

Mr. CARPER. That is really all I had.

Mr. Chairman, I would like to yield back the balance of my time.

Mr. LEHMAN. [presiding]. Thank you, Mr. Carper.

I only have one further question, and I will address it to Mr. Killebrew. Did you have an opportunity to look over Mr. Guildroy's testimony and check out that prototype disclosure form he had?

Mr. KILLEBREW. I have not had the benefit of seeing his model disclosure form.

Mr. **Lehman**. If you could look at it, maybe you could submit to the committee any responses you have.

Mr. **Killebrew**. We would be happy to do that.

Mr. **Lehman**. I just want to say from my standpoint on my bill, I think we can work out most of the difficulties, I really do, because I think your industry wants something similar to this, the goals are the same. I don't think anybody is out as an industry trying to stick it to the consumer, and hopefully we can work out some of the defects that are currently in my bill and maybe move you a little bit at the same time.

So, with that, I think we will just recess the committee for today, subject to the call of the Chair. Thank you.

[Whereupon, at 12:15 p.m., the subcommittee was adjourned subject to the call of the Chair.]

[Letters of invitation to witnesses of this day's hearing and pertinent material received by the subcommittee for inclusion in the record can be found in the appendix.]

APPENDIX

CONGRESSMAN RICHARD H. LEHMAN
STATEMENT ON
H.R. 2282
"TRUTH IN SAVINGS ACT"
FINANCIAL INSTITUTIONS SUBCOMMITTEE
HOUSE BANKING COMMITTEE
JUNE 5, 1986

As the author of H.R. 2282, the "Truth in Savings Act", I would like to extend my thanks and appreciation to Chairman St Germain for scheduling these hearings and I regret that my obligations during the California primary election prevented me from attending yesterday's proceedings.

I have, however, reviewed the testimony presented yesterday and I am confidant that the specific concerns expressed by the regulatory agencies regarding the legislation can be resolved. I am looking forward to hearing from today's witnesses with the same intent in mind.

Mr. Chairman, H.R. 2282 is a very simple bill whose concept is shared by the regulators, the industry and consumers alike. As we all know, the deregulation of interest rates and other changes in the financial services marketplace has created a new, highly competitive arena. And while consumers have more choices in where and how to invest their money, they also have to be more knowledgable in selecting the right financial institution and deposit instrument.

My bill, the "Truth in Savings Act" de-mystifies this complicated and confusing process. It provides consumers and potential depositors with adequate tools to be able to comparison shop for the right account and I look forward to working with you and your staff in perfecting this legislation.

Again, I appreciate yours and the Committee's indulgence in this matter and look forward to today's testimony.

STATEMENT

OF

RANDALL A. KILLEBREW

on behalf of the

AMERICAN BANKERS ASSOCIATION

on

H.R. 2282 and H.R. 3567 as Amended

before the

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS SUPERVISION,
REGULATION AND INSURANCE

of the

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

JUNE 5, 1986

Mr. Chairman and members of the Subcommittee, I am Randall A. Killebrew, President of First National Bank in Petersburg, Illinois. I am also Vice Chairman of the American Bankers Association's Government Relations Council and an ex officio member of its Community Bankers Council. Our Association members include banks of every size, type, and location and the assets of our members are approximately 95 percent of the industry total. I welcome the opportunity to present ABA's views on H.R. 2282, the Truth in Savings Act, and H.R. 3567 as amended, the Depository Institution Examination Improvement Act of 1986.

H.R. 2282, The Truth in Savings Act

The ABA strongly supports the goal of H.R. 2282 -- that is, giving consumers information with which to make meaningful comparisons of deposit accounts. With the expiration of the Depository Institutions Deregulation Act, and the completion of deposit account deregulation under the provisions of that statute, the banking industry is free to design new deposit products and vary the paying of interest on deposits in a way that has not been possible since before 1933.

Elimination of government-imposed ceilings on rates paid on savings has resulted in a variety of competing market-rate savings instruments, which provide the benefits of higher yields to many savers. These new and better choices afford savers and financial institutions the opportunity to select options best suited to their particular interests. The resulting array of competitive advertising makes clear disclosure of terms vital to consumer understanding.

The Federal Reserve Board and Federal Deposit Insurance Corporation (FDIC) have prescribed rules governing the advertisement of interest on deposits by banks. These rules, for example, require that interest rates be stated in terms of the annual rate of simple interest; and that where the annual percentage yield is advertised, the annual rate of simple interest be stated with equal prominence together with a reference to the basis of compounding. Our Association supports the regulators in their efforts to assure meaningful and accurate information in the advertisements of all providers of financial services. We do not object, and would even support as we have in the past regulatory action to outlaw specific abuses in advertising wherever they can be identified.

Our Association is concerned that the provisions of H.R. 2282 are limited to depository institutions. This limitation does not take into account the vast changes in deposit account markets that have occurred with the advent of deregulation. Insurance companies, securities firms, mutual funds and other types of nondepository institutions are active competitors with banks for the consumer's deposit dollar. It is necessary that all financial institution regulators adopt the same standards for advertising so that consumers may make comparisons of rates being offered. But so long as money market mutual funds and other competitors for consumer deposits are free to continue advertising that fails to state the existence of front-end loads and other extensive costs associated with their deposit-like instruments, while stating yields in terms that bear no relationship to the actual returns being earned on their funds under management, we believe that restrictive regulation of banks and other depository institutions would simply drive the consumer deposit dollar to competitors that are not so restricted.

The ABA has urged its members to take voluntary action on rate disclosure and other consumer concerns, and we will continue to do so. As a part of this effort, last year the ABA prepared a banker-action kit to help individual banks formulate a plan for their own institutions. The kit contains guidelines for

Section 3 of H.R. 2282 (see Attachment 1). The guidelines also include samples of "right" and "wrong" advertisements and explanations of why (see Attachment 2). We believe that this kit is an effective addition to other industry initiatives in this area.

Section 3 of H.R. 2282 would make it impossible for banks to advertise on radio or television. The time required to state all the required disclosures would make these advertisements prohibitively expensive, confusing and overly complex. These types of media presentation should be exempt from these rules.

Section 4 of H.R. 2282 would require each bank to maintain a written schedule of all fees, charges, and terms and conditions which apply to each type of account and service routinely offered. The proposed schedule would include information on any monthly maintenance or other periodic charge for an account, any charge for a check which is drawn on an account and dishonored upon presentment, and any charge for the early closure of, or withdrawal from, an account. The proposed schedule would have to be included in the first regular mailing to account holders within 60 days after the effective date of the initial regulations. It would also have to be mailed to account holders at least 30 days before the effective date of any change and given to each potential customer before an account is opened or a service is rendered.

The proposed bill appears to require a notice to every customer of any change on the schedule, whether or not it is a beneficial change (for example, increased interest rates or reduced fees) or does not apply to the particular account or service used by the customer. We suggest this provision be changed to require notice only for changes which are less favorable to the customer.

Under Section 5 of H.R. 2282, the Federal Reserve Board would be required to prescribe uniform methods of calculating annual rates of simple interest and annual percentage yields. In prescribing such regulations, the Federal Reserve would be able to differentiate among kinds or classes of accounts.

We believe that banks should not be restricted in the way they compute their interest payments. Currently, the method for computing interest varies significantly not only by the kind of account but also by the size of bank. For example, ABA's 1985 Retail Deposit Services Report shows that banks used a variety of methods of compounding interest on NOW and Super NOW accounts. Among community banks, the most popular method of computing interest for both NOW and Super NOW accounts was the "average balance for the month", reported by slightly more than one out of three of the banks offering such accounts. Another popular method of compounding was "from day of deposit to day of withdrawal", reported by almost one in four community banks. Among larger banks, the "day of deposit to day of withdrawal" method was most popular, followed by the "average balance for the month" (see Attachment 3).

This provision would be an unnecessary incursion into a detailed level of product design. Congress should not involve itself in formulas which are part of the infrastructure of a highly competitive market. This invasion of free-market product design has no bearing on legislative intent to assure adequate information for comparison shopping for a suitable deposit instrument. In fact, we think that requiring uniform methods of calculating annual rates of simple interest and annual percentage yields could actually be detrimental to consumers because it could stifle deposit account innovations.

We believe that the kind of rate disclosure outlined in our voluntary guidelines makes it possible to achieve the goal of H.R. 2282 without any interference in the way banks offer their products and services.

In sum, the banking industry is already subject to rate disclosure rules prescribed by the Federal Reserve Board and the FDIC. At the same time, our

Association is continually promoting rate disclosure on a voluntary basis. Consequently, we question the need for this proposed legislation. However, if H.R. 2282 is adopted, we believe that the bill should require the Federal Reserve Board to consult with its counterparts at the Federal Trade Commission and the Securities and Exchange Commission to devise similar advertising regulations for all types of deposit-like products.

H.R. 3567 as Amended, The Depository Institution Examination Improvement Act of 1986

H.R. 3567 as amended represents a significant step toward raising the standards of federal banking supervision and increasing the ability of states to supervise their own depository institutions. The American Bankers Association recognizes the need of the Federal bank regulatory agencies to not only train their examiners but also to retain these highly trained individuals. Therefore, the ABA supports this proposed legislation.

Among other things, H.R. 3567 as amended would remove all of the federal financial institution regulatory agencies from the civil service pay scale and establish a procedure for increasing the pay of bank examiners. Also, it would establish independent agency status for each of the regulatory agencies. Another section of the proposed bill would provide for a substantially enhanced educational program for federal examiners. Additionally, it would establish federal criteria for state examinations.

Our Association believes this proposal would go a long way toward solving the relatively high levels of turnover for examiners at certain federal financial institution supervisory agencies, which is one of the major difficulties that exists today with regard to bank examination and supervision. However, there are certain aspects of the bill that may complicate the implementation of this program.

Since the new pay scales provided for in the proposal would apply only to bank examiners, other employees of the depository institution regulatory agencies would be, in effect, forced into a lower paid compensation scale. This two-tier pay scale could have devastating effects on the morale of agency employees not involved in the examination process. We believe that this important factor deserves additional consideration during the legislative process.

Another concern is presented by the total exemption of all officers and employees of the regulatory agencies from all civil service laws. Many of these laws -- such as the anti-bribery statutes, the affirmative action regulations,and the fair labor standards laws -- have important goals totally aside from the bank examination process. If these employees are exempted from federal civil service requirements, it is not at all clear that they would be totally covered by comparable private sector laws. These concerns should be addressed so as not to detract from the benefits this proposal will offer.

H.R. 3567 as amended would exempt the regulatory agencies from the Gramm-Rudman-Hollings Balanced Budget and Emergency Deficit Control Act of 1985 and the Antideficiency Act. The banking agencies, in their efforts to identify and assist troubled banks, continue to be hampered by the artificial budgetary restrictions imposed by Gramm-Rudman-Hollings. Moreover, the Office of Management and Budget (OMB) has recently asserted vastly increased budget supervisory authority over these agencies.

While our Association is strongly in favor of measures to reduce the budget deficit, we think it senseless and counterproductive to restrict the budgets of the banking agencies in the process. Not only are the entire budgets of the agencies paid by the banks they supervise, but the agencies are required by law to rebate a large part of any budget savings to these banks. Because the budgetary impact of the supervisory activities of the banking agencies is essentially nil, we urge this Subcommittee to work toward providing an exemption from Gramm-Rudman-Hollings and OMB oversight for these agencies.

Our Association has long advocated programs designed to enhance the pay and professionalism of the federal bank examination force. We believe that H.R. 3567 as amended would go far toward achieving that goal, and we look forward to working with this Subcommittee to achieve its ultimate enactment.

Thank you. I would be pleased to answer any questions the Subcommittee may have.

ATTACHMENT 1

RATE DISCLOSURE:
GUIDELINES FOR ADVERTISING

In general, for any advertisement, announcement or solicitation of savings and deposit instruments, depository institutions should explain the terms and conditions of the account in simple direct language. A depositor should be able to understand easily the relative merits of competing offers and intelligently choose those that best suit his or her needs. Any solicitation which states the interest rate paid should clearly disclose the annual rate of interest, the annual percentage yield and the method by which interest on the account is compounded.

Specifically, to give consumers information with which to make meaningful comparisons, advertisements regarding the rate of interest should include the following:

- o Annual percentage yield and the method of compounding.
- o Annual rate of simple interest and the length of time the rate is effective.
- o The frequency with which interest is payable.
- o Minimum balance requirements.
- o Clear disclosure of penalties for early withdrawal and any fees.
- o Annual percentage yield and the annual rate of interest should be displayed with equal prominence (same-sized type).
- o When advertising certificates of deposit or any account with a maturity of less than one year, either omit reference to the annual percentage yield or state clearly that the yield is based on compounding of the amount at the stated interest rate for a year and that the actual yield will be less, based on the length of time money remains in the account.

- Do not use the term "profit" wnen referring to interest paid on deposits.

- When advertising time deposits with an initial rate effective for a period of a few months and a lower rate that will be effective for the remaining term of the time deposit, both rates should be stated in type of equal size. Also, the ad must include a statement of the annual yield. (The staff of the Federal Reserve Board has advised member banks not to advertise for a time deposit stating an annual rate of simple interest in excess of the average effective annual yield.)

- Advertisements for Individual Retirement Accounts should not refer to contributions to such accounts as "tax-free" or "tax-exempt." In fact, federal income taxes on contributions to and earnings on IRAs are deferred.

- Advertisements for time deposits where more than one rate is paid are not considered misleading if each rate is stated in type of equal size together with a clear statement as to the length of time each rate is effective. Such ads also must include a conspicuous statement of the average effective annual yield for the deposit.

Following are examples of "right" and "wrong" rate advertisements.

ATTACHMENT 2

GIANT RATES

EARN A JUMBO PROFIT

11.00%	12 Months*
10.50%	180 Days**
10.00%	90 Days

Minimum Deposit Required
FOR DETAILS, CALL 555-0000.

*Per annum simple interest—rate good until May 19
**Variable rate adjusted monthly

WRONG AD

123 Main Street,
Anytown, U.S.A.

ANNOUNCING A NEW MARKET RATE

SPECIAL OFFERING
90-DAY C.D.

10.00%	**10.47%**
Annual Rate of Simple Interest	Annual Percentage Yield*

- $2,500 Minimum.
- Compounded and credited monthly.
- Deposits insured up to $100,000 by the Federal Deposit Insurance Corporation.
- Substantial interest penalty required for early withdrawal.
- This special offer is good only until October 10, so act now.

RIGHT AD

Branches at Town Center Mall,
Main Street Plaza and
Country Club Road

CALL 1-800-555-1000 OR COME IN TO YOUR NEAREST BANK BRANCH FOR DETAILS.

*The yield on this account is based upon monthly compounding at the stated interest rate for a full year. The actual yield may be less, based on how long your money stays in the account

"RIGHT" ADVERTISEMENT

- Presents the annual percentage yield and the annual rate of simple interest clearly and with equal prominence.
- Points out the minimum deposit required.
- Explains when the account is compounded and credited.
- Discloses how the yield is determined.
- States the duration of the special offer.
- Includes conspicuous notice that a substantial interest penalty is required for early withdrawal.

"WRONG" ADVERTISEMENT

- Shows interest rates for three separate accounts with no mention of annual percentage yields.
- Uses the phrase "per annum simple interest," which is jargon for "interest compounded annually." Thus, the yield and the rate of these accounts would be identical, but the average customer would not know it.
- Prominently displays the term "profit," which may not be used in referring to interest paid on deposits.
- States only that "minimum deposit required." Does not indicate amount required.
- States in inappropriately small type that the 10.50% rate shown is variable and will be adjusted monthly. No indication is given of subsequent monthly rates or of the basis of the monthly adjustments.
- Does not include a clear notice that a substantial interest penalty is required for early withdrawal.

ATTACHMENT 3

USE OF SELECTED METHODS OF COMPUTING INTEREST
Percentage of Banks by Asset Size in Million Dollars

	Asset Size (In Million Dollars)			
	Less Than 100	100-500	500 or More	All Banks
NOW accounts:				
Day of deposit to day of withdrawal	23.7	42.7	35.5	26.6
Average balance for the month	34.5	21.0	26.7	32.5
Average balance for the interest period	10.4	9.8	13.3	10.4
Day of deposit to end of interest period	12.6	9.1	11.1	12.1
Super NOW accounts:				
Day of deposit to day of withdrawal	24.5	43.0	31.4	27.3
Average balance for the month	36.4	19.7	27.0	33.8
Day of deposit to end of interest period	10.7	9.9	11.2	10.6

STATEMENT ON

"H.R. 2282: TRUTH IN SAVINGS"
AND
"DEPOSITORY INSTITUTION EXAMINATION IMPROVEMENT"

BY

ALAN FOX
LEGISLATIVE REPRESENTATIVE
CONSUMER FEDERATION OF AMERICA (CFA)

ON BEHALF OF CFA, CONSUMERS UNION AND
UNITED STATES PUBLIC INTEREST RESEARCH GROUP

BEFORE THE
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS SUPERVISION,
REGULATION AND INSURANCE

HOUSE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
HON. FERNAND J. ST GERMAIN, CHAIRMAN

June 5, 1986

My name is Alan Fox. I am Legislative Representative for Consumer Federation of America (CFA), which consists of over 200 local, state and national consumer, senior citizen, rural, cooperative and labor organizations that together have over 30 million members. CFA has, since 1971, represented these organizations before Congress and federal regulatory agencies on a wide variety of matters of concern to consumers.

I appreciate very much the opportunity to testify on HR 2282, the "Truth in Savings Act," which embodies the principles of one of CFA's highest priorities, that of full, complete, comparable disclosure of all of the elements of financial services pricing. I will also have some comments about the revision of the "Depository Institution Examination Improvement Act of 1986." This statement is made on behalf of CFA as well as:

Consumers Union (CU), a nonprofit membership organization, chartered in 1936 under the laws of the State of New York to provide information, education, and counsel about consumer goods and services and the management of family income. CU publishes Consumer Reports, with a paid circulation of approximately 3.5 million, which reports on its own product testing as well as on a variety of other issues that affect consumer welfare; and

U.S. Public Interest Research Group (US PIRG), a national nonprofit, nonpartisan research and advocacy organization serving state PIRGs across the country.

INFORMATION NEEDED FOR MARKET TO FUNCTION

Adequate information is essential to a fully functioning and efficient market. In the past, strict regulation of deposit accounts and other features of the market for financial services presented consumers comparing different accounts with a relatively straightforward task. Account terms varied little and competition between depository institutions and other providers of similar services was limited.

Today, the terms, conditions and prices of deposit accounts are almost completely unregulated, and consumers are faced with a widening variety of bank-like services offered by a widening variety of institutions. This transformation of the market for financial services has benefitted those consumers with adequate resources to take advantage of their new options. For most consumers, however, the expansion of options has not been matched with the expansion of information necessary to evaluate options and make informed choices.

A market cannot operate efficiently if buyers of services are routinely unable to determine the prices and compare the value of competing services. Consumers today have a great deal of difficulty acquiring information, and greater difficulty comparing what information is available from competing institutions. The result is an inefficient market that fails to reward providers of the best values, fails to penalize deceptive behavior, and fails to allow consumers to influence market behavior through rational purchasing decisions.

COMPARING CONSUMER ACCOUNTS

A consumer who attempts to find the best place to keep a deposit account or who tries to evaluate an advertisement for such an account has an increasingly difficult task. Simply learning which account has a higher interest rate is not sufficient. The consumer must also know the basis of compounding, whether the interest is paid on an average or low balance, any minimum balance required to receive interest, and how the minimum balance is calculated. That task is further complicated by the difficulties of comparing time deposits of varying maturities and by accounts that offer different rates of interest on different amounts or over the life of the deposit, or that vary the rate of interest to reflect market changes.

But even that is only half the job -- the income half. Service fees are taking a bigger and bigger chunk of consumers' dollars, and the types of fees charged are proliferating as well. The consumer trying to compare accounts must ask about monthly fees, per item fees, ATM fees, bounced check charges, returned deposit charges, and when those fees will be assessed, a factor that may depend on an average balance, a current balance, a number of transactions per month, or any of several combinations of factors.

As deposit accounts have been deregulated and the types of fees charged have expanded, this job has become far more difficult. Consumers have more accounts to compare and more factors to look at in each account. Financial institutions have tended to compete by advertising the rosiest picture possible, for example the interest rate paid in a short, introductory period of only a few days. Financial institutions have emphasized income to consumers in their ads and disclosures, while leaving consumers to find out about costs on their own. Consumer organizations that have attempted to provide a full picture through fee surveys have consistently come away frustrated by lack of cooperation and lack of accurate information.

TWO PARTS TO ADEQUATE ACCOUNT DISCLOSURE

Two types of disclosures are needed to allow consumers to compare account offerings: Accurate and uniform disclosure of interest income on deposit accounts, and disclosure of all the potential costs of consumer accounts. Legislation should be drawn to provide consumers with the full picture -- accurate, concise, comparable information on the costs and benefits of deposit accounts.

INCOME DISCLOSURE

Many factors in addition to the nominal interest rate affect the actual return a consumer will receive from an interest-bearing deposit account. The best known factor is compounding, the effect of which is usually handled by disclosure of the annual percentage yield (APY). The effect of compounding is relatively minor, however, compared to other factors that affect consumers' income from deposit accounts. A 5.5% annual rate of simple interest (ARSI) compounded quarterly will yield 5.61%; monthly 5.64%; daily 5.65%. The difference in income between daily and quarterly compounding at 5.5% ARSI is 40 cents per $1000 per year.

Different methods of calculating balances on which interest is paid have a far greater impact on return. Most consumers assume that interest is paid on a day-of-deposit to day-of-withdrawal basis or on a daily balance basis. But interest may be paid on a variety of other balance calculation methods, including a low balance method, where interest is paid only on the lowest balance in the account on any one day of the month. The effect of this technique may be to wipe out nearly every dime an unsuspecting consumer has depended on as interest. Withdrawing just $100 from such an account one day too early may be fourteen times as costly to a consumer as the difference between daily and quarterly compounding.

When different balance methods are used, comparison between accounts becomes impossible. It is not enough to know that two accounts each have yields of 5.65%. The question consumers need answered is "5.65% of what?" Consumers receive dollars, not percentage points, and the account that pays the most is the one that pays the most dollars, regardless of the percentage rate.

Because an APY disclosure generally assumes both that a single rate will apply for a full year and that funds will be left on deposit for a full year, several special cases must be considered. These include:

*Time deposits of less than one year, where an APY assumes that the deposit may be rolled over at the same rate.

*Accounts with variable interest rates linked to market indices or, more commonly, varied periodically according to the judgment of bank managers.

*Introductory or "teaser" rates that apply for a short time, after which a lower or a variable rate takes effect.

*Tiered rate accounts, on which different rates of interest are paid on different balances.

*Combinations of any of the above, such as tiered rates where one or more tiers pay variable rates or variable rate accounts with introductory teaser rates.

As a general rule, any advertisement of an account with features such as these that includes a reference to a rate of interest must include enough information for a consumer to fully understand these features, as well as related information such as balance requirements necessary to receive a particular rate of interest.

FEES DISCLOSURE

Even full disclosure of interest yield no longer gives consumers a complete picture. Interest yield is gross, not net, income. In recent years, disclosure of account fees has become especially important in evaluating consumer accounts. Between 1979 and 1983, the Federal Reserve Board reported, fees on accounts doubled to over $10 billion a year. CFA's annual survey of account fees has revealed that these increases are continuing. A year ago, we found that the cost for moderate usage of a small NOW account increased 13% between 1984 and 1985. Our third annual survey, released earlier this week, indicated an additional 12% increase in costs of NOW accounts from 1985 to 1986.

Fees are also becoming more numerous and more complex. In addition to relatively well-known fees -- monthly charges on accounts with balances below a certain minimum and bounced check charges -- fees are now charged in some instances for automatic teller machine transactions and for depositing a check that is returned for insufficient funds. Many institutions charge fees for each check written in addition to a monthly fee. And the monthly fee may be tiered depending on account balances, with as many as five different rates assessed on different balances. In some cases, fees are charged based not on the minimum balance, but on the number of transactions in a month.

Our most recent survey of fees, conducted in April 1986 at 225 banks and savings and loans in 18 states and the District of Columbia, revealed some new and imaginative ways of charging for deposit services. Some banks charge not for each automatic teller transaction but charge monthly or annually for use of an ATM card. These charges range as high as $18 per year. One institution with a $7 monthly charge for failure to meet a balance requirement charges an additional $10 per month should the consumer desire return of cancelled checks. Several charge more for teller visits than for ATM transactions, or else trigger hefty monthly fees if the customer talks too often with a human teller. A number of other banks have gone beyond charging consumers for withdrawals and charge as well for each deposit.

Consumer organizations that have attempted to survey these fees have invariably found that they are unable to get accurate information from employees in branches, where consumers go to ask questions and open accounts. As Ken McEldowney, Executive Director of San Francisco Consumer Action, told an American Bankers Association conference in 1985:

> It seems clear to us that the communication of facts about prices, rates and basic bank policies has a very low priority at most banks. Even banks which publish brochures that are otherwise excellent often leave out prices. For 12 years, we have been presented with confusing, misleading and downright incorrect answers every time we tried to obtain information at the branch level.

As a result of our experiences with fee surveys and from consumers' experience with inadequate or misleading fee and interest rate information, we believe that voluntary disclosures have not and will not work. Voluntary efforts cannot work because information must be presented in a consistent format and with consistent terminology in order to allow consumers to make informed choices. This consistency is needed because few consumers can become experts in the business of placing investments or deposits. They make such choices infrequently in a market that may change rapidly, and which is at times barely comprehensible even to those who observe it closely. Consistent terminology and consistency of disclosures cannot evolve from the market. Consistency can only be mandated by regulation or legislation. Mandated terms and formats for disclosures need not be costly to develop and should ease banks' compliance problems by providing a simple format for meeting such requirements.

STANDARDIZED BALANCE CALCULATION METHODS

The variations in consumer benefits and costs caused by one critical deposit account factor cannot be handled through disclosure. As we have noted previously, when different balance calculation methods are used to determine interest payments, comparison between accounts becomes impossible. Unless consumers can predict their patterns of deposits and withdrawals, they cannot determine the effects of two *different balance calculation methods.*

The only clear solution to this important problem is a legal requirement mandating use of a single method for calculating all balances used to determine interest payments on deposit accounts. If balance calculation methods are not standardized, consumers will not be able to use the other account disclosures to accurately compare accounts.

We believe this solution is particularly appropriate now that all interest rate restrictions have been removed from consumer accounts. Many of the differences in balance calculation methods and compounding methods grew out of financial institutions' attempts to compete on the basis of price while limited by interest rate caps. Observers of the market agree that these attempts to get around rate caps were inefficient and distorted the market.

Now that these caps no longer are in force, it is time for banks and other financial institutions to compete, to the extent they will compete by price, on the basis of differences in rates rather than on artificial, distorted, difficult to understand conditions such as balance methods. Standardizing balance calculation methods will not limit competition. It will make competition meaningful because it will allow consumers to accurately compare rates. We do not allow retailers to define weights and measures any way they wish, and we recognize that variations in weights and measures do not promote but impede true competition. Balance calculation standardization would serve as the true weights and measures law of financial services.

THE ACCOUNT SCHEDULE

Section 4 of HR 2282, which requires maintenance by each depository institution of a written schedule of fees, charges, terms and conditions, is a key part of this legislation. Disclosure of the fees and conditions pertaining to deposit accounts is essential to rational consumer shopping and the efficient functioning of the market. To be useful to consumers, these disclosures must meet three requirements:

1) They must be comprehensive. Not only must every fee be disclosed, but other relevant terms, such as balance levels must be disclosed as well. Disclosure standards for variable rate accounts such as Money Market Deposit Accounts must be developed.

2) The terminology must be consistent. Congress should require the Federal Reserve Board to define the terms used in the schedule so consumers will have confidence that when two disclosures use the same terms they mean the same things.

3) The disclosures must be consistent in format. Disclosure forms, left to the imagination of marketing departments, have resulted in slick brochures with information buried in reams of useless text. If consumers are to use disclosures to compare accounts, the form as well as the substance of the disclosures must be consistent. A simple chart, separate from distracting text, would allow consumers to place the disclosures of two banks side-by-side and make comparisons.

CONTENTS OF THE ACCOUNT SCHEDULE

A complete disclosure schedule should include information on:
1) Minimum initial deposits
2) Minimum balances to avoid fees
3) Monthly fees
4) Per transaction charges for all types of transactions including ATM fees
5) Excess withdrawal charges
6) Bounced check charges
7) Returned deposit charges
8) Stop payment order charges
9) Balance inquiry charges
10) Account closing charges
11) Inactive account charges
12) Costs for printing checks
13) Any other fees for services routinely offered
14) Interest rate (or method of determination of interest for variable rate accounts)
15) Delayed funds availability policies
16) Non-fee requirements for opening accounts
17) Fees for check cashing by non-depositors
18) Relevant terms and conditions such as any minimum balance necessary to avoid a fee or to receive a particular rate of interest and the method used to determine the balance.

The law must ensure complete disclosure when interest rates or fees are split by time, balance, or account activity. Full disclosure of every level of each such term is necessary. Special provisions are also needed for disclosures of the return on variable rate deposit accounts such as Money Market Deposit Accounts (MMDAs). At a minimum, disclosures should clearly indicate that the interest rate is variable and cannot be guaranteed; what the basis and frequency of the variation are; and consistent historical data about the performance of the account.

ADVERTISEMENTS

Section 3 of HR 2282 specifies disclosures of interest rates and account terms in advertisements and other solicitations. These disclosures need not be as comprehensive as the full disclosures necessary in account schedules. While advertisements should be required to use consistent terminology to prevent misleading or confusing consumers, it is not appropriate to require consistent formatting of information beyond what is described here. As Section 3 indicates, these requirements should only be invoked when an advertisement refers to an account's yield.

In light of the complete deregulation of deposit account interest rates, the Federal Reserve Board is reexamining the current requirement that an institution that discloses an annual percentage yield (APY) in an advertisement also disclose the annual rate of simple interest (ARSI). In comments submitted to the Board by four consumer organizations, including CFA, we urged a requirement of prominent disclosure of the APY with less prominent disclosure of the ARSI and the basis of compounding. Those comments have been submitted for inclusion in the record.

The APY is the most important yield figure because it incorporates both the interest rate and the effect of compounding. Unlike an ARSI disclosure requirement, the APY disclosure will allow consumers to compare apples with apples. Although knowledgeable consumers can derive the APY if they know both the ARSI and the frequency of compounding, most consumers cannot. Most consumers are also so unfamiliar with financial terminology and concepts that they do not know which figure is more relevant to yield when confronted with both the ARSI and APY.

CONSISTENCY OF CONTENT AND FORMAT

We cannot stress enough the necessity for both terminology and format to be consistent. If the law allows confusing or misleading terminology, or allows different providers to use the same term to mean different things, consumers will be unable to make use of the information. Consistent formats in account schedules will facilitate comparisons between accounts and will also facilitate compliance by removing design as a consideration.

Consistency by its nature cannot be arrived at through voluntary efforts. If even one institution uses its own terminology, a voluntary effort has failed. When disclosures are mandated but consistency is not, behavior that is misleading or deceptive will often be rewarded by allowing dishonest providers to make their services and terms look more attractive relative to honest providers. Consistency protects those who are most willing to disclose fairly by taking away any advantages their competitors may gain through misleading disclosure.

If consistent use of terminology is not required, consumers will continue to be plagued with "disclosures" such as the statement used by some that "interest is paid on the highest balance on deposit the entire month," which only after careful scrutiny can be discovered to mean the same as "interest is paid on the lowest balance reached by the account on any one day in the month." If the law is to be useful to consumers, it must make impossible misleading terminology of this nature.

We urge requirement of a consistent format for account schedules to allow comparison among accounts. Consumers must be able not just to look at the costs of their own account, but to compare their account with competitive accounts. There are many practical barriers to switching accounts in order to take advantage of a better offer. These barriers should not be buttressed with information disclosure in a format that does not even allow a determination that the better offer exists.

Banks and other financial institutions that argue that consumers do not take advantage of currently available information fail to take into account the fact that their inconsistent disclosures have rendered practical use of those disclosures impossible. In contrast, consumer groups such as Consumer Action and Public Citizen, that publish comparative information in chart form, have been flooded with requests for the information, even when they must charge or require a stamped envelope.

CONCLUSION

Accurate and comparable information about bank account terms is vital if the market is to operate efficiently. Consumers can and will use this information to discipline poor performers and reward good performers. Voluntary disclosure efforts are not working, and cannot work because they cannot produce the level of standardization of terminology or format necessary for the average consumer to use these disclosures effectively.

DEPOSITORY INSTITUTION EXAMINATION IMPROVEMENT

Consumers have a great stake in measures ensuring adequate examination of insured depository institutions. Recent events in Ohio and Maryland indicate clearly the tremendous burdens placed on consumers when regulators do not adequately monitor the performance of financial institutions. Consumer confidence in the financial system is based to a large extent on consumers' perception that their money is safe in federally insured depository institutions. Should that confidence ever be shaken, the consequences to consumers, financial institutions, and the national and global economies could be catastrophic.

The specific budgetary and personnel measures needed to ensure adequate examinations should be carefully considered. In so doing, we strongly urge Congress not to overlook elements of the examination system involving factors other than traditional "safety and soundness."

Examinations for community reinvestment and consumer compliance are often shortchanged by the regulatory agencies. Cutbacks in these examinations at some agencies predate cutbacks mandated by the Gramm-Rudman-Hollings Act. We believe these elements of examination are every bit as important to consumers as safety and soundness examinations. If Congress is to make improvements in the examination process, it must ensure that those improvements are reflected in the agencies' consumer compliance and community reinvestment responsibilities as well as their safety and soundness responsibilities.

We have two specific recommendations. First, section 6, concerning minimum requirements for state examinations, should clearly require that state examinations include, to the extent required by federal law and regulation, examinations of financial institutions' community reinvestment and consumer compliance performance. State examinations must not be substituted for federal examinations unless these factors are included.

Second, Congress should use this opportunity to instruct the regulators to give full attention to ensuring that depository institutions meet their community reinvestment and consumer compliance obligations. These obligations must no longer receive only the leftovers of the agencies' resources, and they must no longer be dropped from sight when safety and soundness problems grow. The agencies must be told that, having been given all the tools they need to do their jobs, they must do the entire job. We believe Congress should make such a statement and make it explicitly in this legislation.

COMMENTS OF

CONGRESS WATCH

U.S. PIRG

CONSUMERS UNION

CONSUMER FEDERATION OF AMERICA

On

PROPOSED REGULATIONS REGARDING ADVERTISING OF INTEREST ON DEPOSITS

Submitted To:

THE FEDERAL RESERVE BOARD

Docket No. R-0514

March 6, 1986

U.S. PIRG[1], Congress Watch[2], Consumer Federation of America[3] and Consumers Union[4] applaud the Federal Reserve Board for addressing the problems surrounding deposit account advertising by proposing revisions to Regulation Q. While we believe the proposed regulations improve upon the present situation, we strongly recommend some modifications and additions to them.

As a preliminary matter, we must point out that the comprehensiveness of required account disclosures should vary with the type of advertisement involved. Required disclosures for oral advertisements should be less detailed than for advertisements in the print media. And account disclosures that must be made available to potential and current customers upon request, which we refer to as account schedules, should be comprehensive.

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[1] U.S. PIRG is a national nonpartisan, non-profit consumer and environmental organization which serves as the national advocacy office for a member of state PIRGs.

[2] Congress Watch is a consumer research, lobbying and litigation organization with 80,000 members nationwide. Since its founding by Ralph Nader in 1971, Congress Watch has fought for product safety, a healthy environment and consumer rights in the marketplace.

[3] Consumer Federation of America is a coalition of over 200 national, state and local consumer, senior citizen, labor, farm, cooperative and rural organizations which together represent over 30 million people.

[4] Consumers Union is a nonprofit membership organization which provides information, education, and counsel about goods and services and the management of family income. Consumers Union publishes Consumer Reports, with a circulation of approximately 3 million, which reports on its own product testing as well as on a variety of other issues which affect consumer welfare.

We will distinguish throughout most of our comments between disclosures required for print media advertisements and for account schedules. We devote a separate section of our comments to oral advertisements. We urge the Board to make similar distinctions in the final regulations.

Additionally, the type of advertisement involved affects more than the comprehensivenesss of the required disclosures. It also affects their triggering mechanism. Where print or electronic media are involved, we believe that the appropriate disclosures should only be required if the advertisement refers in any way to an account's yield. On the other hand, the regulations should require that all banks make the comprehensive account schedule available to any person upon request even if the account is non-interest bearing. When the bank wishes to make a change in the schedule, the regulations should require that it notify its customers at least 30 days before the change becomes effective.

I. Should the Regulations Require A Disclosure of APY, ARSI or Both?

We urge a requirement that banks prominently disclose annual percentage yield (APY) and less prominently disclose in a footnote to the APY both the annual rate of simple interest (ARSI) and the basis of compounding. The APY is the most important yield figure because it incorporates both the interest rate and the effect of compounding. Unlike an ARSI disclosure requirement, the APY disclosure will allow consumers to compare apples with apples. Although knowledgeable consumers can derive the APY if they know both the ARSI and the frequency of compounding, many consumers cannot. In any case, it is irrational to put even knowledgeable consumers to this trouble when the result of the calculation can easily be disclosed instead.

We recognize that a consumer will not, in fact, obtain the full APY that is disclosed if he or she totally withdraws funds from an account before the year's worth of compounding occurs. If the account compounds interest during the year, but funds are totally withdrawn before the year ends, a consumer will not receive a percentage of the APY that is exactly proportionate to the percentage of a year that his funds were on account. However, most consumers do not open, or shop for, an account with the expectation that they will close it in the near future. Consequently, we support a prominent percentage yield disclosure that is premised on the assumption that funds will remain on account throughout the year.

We have considered and rejected the proposal to require either the ARSI alone or both an ARSI and APY disclosure of equal prominence. As the research of Richard Morse indicates, many consumers cannot determine the account that would produce the best yield when their comparisons are based on an ARSI disclosure exclusively. Further, many consumers are so unfamiliar with financial terminology and concepts that they would not know which figure was more relevant to yield if both APY and ARSI were disclosed with equal prominence.

II. What Additional APY-Related Information Should Be Disclosed?

A. Hypothetical APYs

Our recommendation to require a prominent APY disclosure applies, with some qualifications, across the board to time, demand and saving accounts and to accounts with fixed rates, split rates, variable rates and multiple rates. If the APY could change within one year of the disclosure, however, the disclosure should also include, at a minimum, a statement describing the hypothetical nature of the disclosed APY and the length of time that the terms producing the APY will be in effect. In the case of media advertisements, these additional disclosures could be incorporated into the same footnote that discloses the ARSI and terms of compounding. In account schedules, these disclosures should be located directly under the APY disclosure.

For example, a time account of less than one year fits into this category. Under our proposal, a bank advertising this account in the media would include a footnote to the APY disclosure that might read as follows:

> This APY is hypothetical because it assumes that the account will earn the current interest rate for 1 year. However, the current rate of ____, compounded ____ is only guaranteed through the maturity date.

A variable rate account also fits into this category. To help underscore the hypothetical nature of this type of account, the annualized percentage yield based on the current rate should not be described simply as the "APY." This term strongly suggests that the underlying rate is fixed, which is obviously misleading. Instead, for variable rate accounts banks should refer to the annualized percentage yield based on the current rate as the "Current APY."

However, if an introductory teaser rate is offered on a variable rate account, the term "Introductory APY" should be required. This will help to flag the teaser feature.

Further, with this type of an account, the regulations should require disclosure of the current index rate in media advertisements and in the account schedule. This will alert consumers to the magnitude of the initial teaser rate, and encourage them to look more closely at future rate possibilities. This closer examination should be facilitated by a requirement that banks make available to consumers a recent history of the index. The account schedule should include a statement that this historical index is available. Disclosure of early withdrawal penalties are also particularly important with this type of an account.(See Part C)

Further, to ensure that all variable rate account APYs are appropriately flagged as hypothetical, the regulations must define the term "variable rate account." Because it is presently undefined in the regulations, the term might be interpreted to refer only to an account the future rate of which is tied to an index. However, many accounts that are not now technically regarded as variable rate function as if they were. Typically, these are saving or demand deposit accounts on which the disclosed yield is not guaranteed for a particular period of time. Because it assumes that a certain rate will remain in effect for a one year period, the APY disclosure of any account that does not guarantee a fixed rate for one year should be regarded as hypothetical. All the disclosures we recommend for variable accounts should apply to these accounts.

In any case in which the rate on which the disclosed APY is subject to change within the year, an addition to the APY disclosure is needed to explain its hypothetical nature. It should read as follows:

> This Current APY (or Introductory APY) is hypothetical because it assumes that the account will earn the current interest rate for 1 year. However, the current rate of ___, compounded ___, is only guaranteed for ____.

We strongly support the additional yield-related disclosures that the proposed regulations require for variable rate accounts. These include the method by which future changes in rates will be determined, which should be disclosed in media advertisements and in the account schedule, and the frequency of rate adjustments, which should at least be disclosed in the schedule. These disclosures are essential to enable consumers to understand how the account will operate.

B. Multiple Rate Accounts

Multiple rate accounts on which the rates to be paid in subsequent periods are known in advance present a unique situation. Consumers need to know more than the composite APY, which is proposed as a disclosure under alternative 2, because the actual annualized yield could be more or less than that figure depending on the time during which the deposit is maintained. For example, an institution may offer an account with a 12% APY for 2 months, after which the rate will drop to produce a 9% APY for an indefinite period. If the consumer only plans to invest his money for 2 months, the early APY information will be useful.

Consequently, in both media advertisements and account schedules, the regulations should require disclosure of both APYs and the periods during which the terms producing each APY will be in effect, as well as the composite APY. The periods to which each APY disclosure applies should be put in close proximity to the appropriate APY, and the composite APY should be given equal prominence. Again, disclosure of early withdrawal penalties are particularly important with this type of account.

C. Time and Amount Requirements

The proposed regulations would require banks to clearly state time and amount requirements, "together with any lower rates that apply if the deposit is withdrawn at an earlier maturity or prior to maturity." (Proposed section 217.4(b)(4)(5)) We endorse these provisions, but we recommend required disclosure of both the lower rate and the lower APY. The time and amount requirements, as well as the existence of an early withdrawal penalty, must be disclosed in both media advertisements and account schedules. The schedule should clearly explain the early withdrawal penalty and the conditions under which it will be imposed.

Additionally, where an amount, rather than a time, requirement affects the yield, the APY that will result if the amount requirement is not met should be disclosed, at least in the account schedule.

Finally, banks do not uniformly calculate the balance used to determine whether an amount requirement has been met. For example, some banks use minimum balances and some use average daily balances. Consequently, whenever a balance requirement affects yield, the schedule should also include a description of the balance calculation method used for this purpose.

D. Fees, Balance Methods, and Posting Dates

As your proposal suggests, service fees, which are not incorporated into the APY calculation, can affect the actual yield earned on an account. In fact, a high APY can totally obscure the fact that high fees, or the use of a disfavorable balance calculation method, could make the effective yield of an account much lower than that of a competing account with a lower APY. We are pleased that the proposal begins to address this problem, but we believe it does not go far enough toward resolving it.

Our solution is designed to meet several objectives. First, to promote the ability of consumers to comparison shop. Second, to encourage consumers to consider all terms that can affect yield, not just ARSI and APY. Third, to allow consumers to choose the best accounts by providing all the yield information necessary to make that choice.

1. Standardization of Methods

Disclosure requirements are not always satisfactory solutions to a market in which many buyers are unable make rational choices among competing products. This is the situation in the banking industry today. Consumers are deterred from making rational account selections not only because of the lack of information regarding product terms, but because of the extreme diversity among product offerings and the complex nature of many of the products. Standarization of certain account terms would facilitate comparison shopping and allow competition to work.

The methods we urge you to standardize in the context of the proposed regulations are only those that will foster comparison shopping. They are 1) the method used to determine the balance on which interest is paid and 2) the time at which a deposit is credited for interest accrual purposes.

The method used to determine the balance on which interest is paid can drastically affect an account's yield. Studies that were done to highlight this problem over a decade ago show that a typical account paying 6% interest could earn as little as $44.93 or as much as $75.30 depending on the balance method. (See Attachment)

Although banks could be required to disclose both their balance methods and posting policies, consumers are not well equipped to plug these variables into other yield disclosures to determine the relative costs and benefits of competing accounts. On the other hand, unlike price regulation, standardization of these terms will not require banks to pay more or less interest dollars on their accounts. Rather, banks that currently use a balance method or posting date that is less favorable to consumers than the standardized methods we recommend would be free to lower their rates.

As the standardized balance method, we recommend the daily balance, which should be specifically defined to reflect all transactions that occur by the close of business every day. As the standardized deposit crediting date, we recommend the day of deposit.

2. Disclosure of Terms

An alternative, but less beneficial, solution would be to require the disclosure of the bank's policies on these issues. This is what the regulations should minimally require to enable consumers to comparison shop and to inform them of the terms of their account contract.

If this minimal option is adopted, however, the disclosures must be meaningfully written. For example, a disclosure that states that an account pays interest on a last-in first-out basis tells consumers very little. Because most consumers are not accountants, the balance method disclosure should inform consumers that the daily balance method is the most advantageous. The disclosure could read as follows:

> This account calculates the balance on which interest is paid according to the ___ method. It does not use the daily balance method, which is most advantageous to consumers.

The above disclosure should be provided in print media advertisements. The comprehensive account schedule should include the same disclosure along with a statement in clear language that explains the balance method used.

As the Board is no doubt aware, many banks are now imposing high fees, both recurring and nonrecurring, on consumers. Frequently consumers have no reliable and comprehensive source from which to obtain advance notice of these fees. Besides the fact that these fees affect the account's yield, consumers have an obvious interest in knowing the basic terms of the contract they enter into with their bank. Consequently, we strongly believe that the Federal Reserve Board should include in the regulation a requirement that banks disclose all fees that could affect the account and the conditions under which these fees would be assessed, including an explanation of minimum balances needed to avoid fees.

This comprehensive fee information should be included in the same schedule in which the comprehensive APY-related information is contained. We are currently working with the Office of the Comptroller of the Currency on both the content and the format that should be required for this schedule. We would also be happy to work with you.

For media advertisements, such a complete disclosure is obviously unworkable. However, advertisements should contain a variation on the general statement that is included in the proposed regulations, such as:

> This account is subject to regular charges that may reduce the stated APY.

As the proposal states, this advertisement disclosure should only be required if fees are triggered upon the occurrence of regular account activity. The proposed regulations appear to identify those fees that fit into this category.

III. Oral Advertisements

Where any yield-related statement is made in an oral advertisement, we urge that the regulations require the following disclosures:

All Accounts:

-APY (or a version thereof (see below));

-Statement that regular fees may reduce the stated APY;

-Existence of penalty for early withdrawal;

-Time or amount requirements.

Variable Accounts:

-Current APY (or Introductory APY if teaser rate involved);

-Period during which APY will remain in effect.

IV. Prohibition Against Misleading Statements Regarding "Free" Accounts

Although the proposed regulations generally prohibit misleading or inaccurate advertisements, we strongly recommend a specific prohibition against advertisements of "free" or "no cost" accounts under certain circumstances. That is, the regulations should prohibit use of that terminology if either of the following conditions exist:

1. There is a minimum balance required to avoid fees and charges; or
2. The account has regular charges.

V. MISCELLANEOUS PROVISIONS

Because the ARSI will be disclosed under our recommendation, we will repeat here a related recommendation that consumer advocates have pressed for years. That is, since some consumers may rely on the ARSI disclosure under certain circumstances, the regulations should require banks to use a standardized year. We recommend that a year be defined as 365 days, and that other periods be defined as a fraction thereof.

Further, the regulations should require that banks include in the account schedule relevant renewal information in the case of a time deposit. For example, consumers need to know whether the bank has an automatic renewal policy and when they will receive notice of maturity. These and other disclosures related to time deposits are presently required by the New York truth-in-savings regulations.

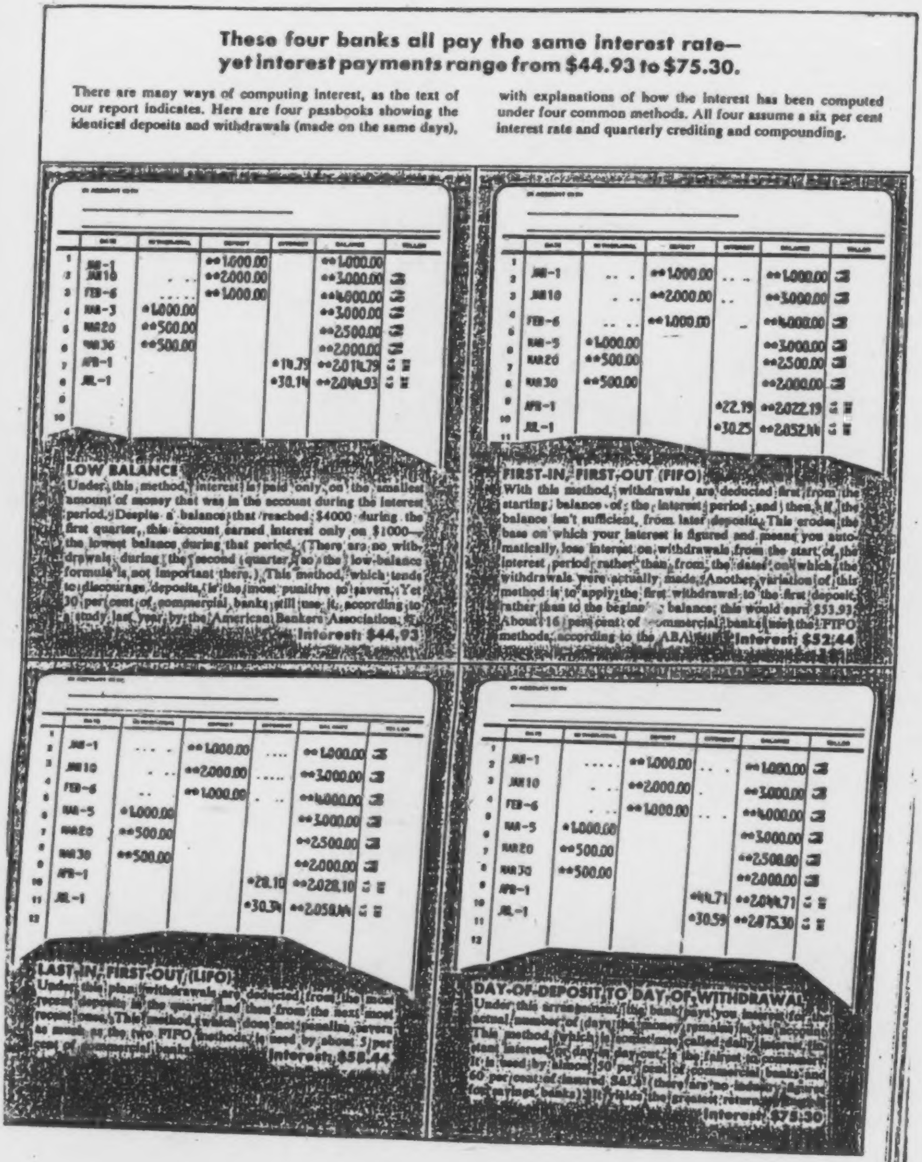
The remaining disclosures that should be incorporated in the account schedule include the following:

-Any initial deposit requirement;

-The frequency with which interest will be credited;

-A statement, where applicable, that a depositor will lose interest that has accrued but not been credited if funds are withdrawn before interest has been credited;

-Any other disclosures the Board determines will assist consumers in understanding and comparing accounts.



These four banks all pay the same interest rate—yet interest payments range from $44.93 to $75.30.

There are many ways of computing interest, as the text of our report indicates. Here are four passbooks showing the identical deposits and withdrawals (made on the same days), with explanations of how the interest has been computed under four common methods. All four assume a six per cent interest rate and quarterly crediting and compounding.

JAN-1		**1,000.00		**1,000.00
JAN10		**2,000.00		**3,000.00
FEB-6		**1,000.00		**4,000.00
MAR-3	*1,000.00			**3,000.00
MAR20	**500.00			**2,500.00
MAR30	**500.00			**2,000.00
APR-1			*14.79	**2,014.79
JUL-1			*30.14	**2,044.93

LOW BALANCE

Under this method, interest is paid only on the smallest amount of money that was in the account during the interest period. Despite a balance that reached $4000 during the first quarter, this account earned interest only on $1000—the lowest balance during that period. (There are no withdrawals during the second quarter, so the low-balance formula is not important there.) This method, which tends to discourage deposits, is the most punitive to savers. Yet 30 per cent of commercial banks still use it, according to a study last year by the American Bankers Association.

Interest: $44.93

JAN-1		**1,000.00		**1,000.00
JAN10		**2,000.00		**3,000.00
FEB-6		**1,000.00		**4,000.00
MAR-5	*1,000.00			**3,000.00
MAR20	**500.00			**2,500.00
MAR30	**500.00			**2,000.00
APR-1			*22.19	**2,022.19
JUL-1			*30.25	**2,052.44

FIRST-IN, FIRST-OUT (FIFO)

With this method, withdrawals are deducted first from the starting balance of the interest period and then, if the balance isn't sufficient, from later deposits. This erodes the base on which your interest is figured and means you automatically lose interest on withdrawals from the start of the interest period rather than from the dates on which the withdrawals were actually made. Another variation of this method is to apply the first withdrawal to the first deposit, rather than to the beginning balance; this would earn $53.93. About 16 per cent of commercial banks use the FIFO methods, according to the ABA study.

Interest: $52.44

JAN-1		**1,000.00		**1,000.00
JAN10		**2,000.00		**3,000.00
FEB-6		**1,000.00		**4,000.00
MAR-5	*1,000.00			**3,000.00
MAR20	**500.00			**2,500.00
MAR30	**500.00			**2,000.00
APR-1			*28.10	**2,028.10
JUL-1			*30.34	**2,058.44

LAST-IN, FIRST-OUT (LIFO)

Under this plan withdrawals are deducted from the most recent deposits in the quarter and then from the next most recent ones. This method, which does not penalize savers as much as the two FIFO methods, is used by about 5 per cent of commercial banks.

Interest: $58.44

JAN-1		**1,000.00		**1,000.00
JAN10		**2,000.00		**3,000.00
FEB-6		**1,000.00		**4,000.00
MAR-5	*1,000.00			**3,000.00
MAR20	**500.00			**2,500.00
MAR30	**500.00			**2,000.00
APR-1			*44.71	**2,044.71
JUL-1			*30.59	**2,075.30

DAY-OF-DEPOSIT TO DAY-OF-WITHDRAWAL

Under this arrangement, the bank pays you interest for the actual number of days the money remains in the account. This method (which is sometimes called daily interest, instant interest, or day-in day-out) is the fairest to consumers. It is used by almost 30 per cent of commercial banks and 60 per cent of insured S&Ls (there are no industry figures for savings banks). It yields the greatest return.

Interest: $75.30

Attachment I   CONSUMER REPORTS Feb 1975

Consumer Federation of America

BANK FEES ON CONSUMER ACCOUNTS

THE THIRD ANNUAL NATIONAL SURVEY

Prepared by:

San Francisco Consumer Action
Consumer Federation of America

Also conducted by:

American Council on Consumer Awareness
Arizona Consumers Council
Association of Massachusetts Consumers
City of Detroit Consumer Affairs Department
Consumer Council of Maryland
Florida Public Interest Research Group
Idaho Consumer Affairs
Iowa Public Interest Research Group
Kansas Consumer Affairs Association
Louisiana Consumers League
Michigan Consumers Council
Milwaukee Concerned Consumers League
Missouri Public Interest Research Group
Montgomery County (MD) Consumer Affairs Department
New York State Consumer Protection Board
Niagara Frontier Consumer Association
Ohio Consumers League
Rhode Island Public Interest Research Group
Texas Consumer Association
Wisconsin Consumers League

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June 2, 1986

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For the second consecutive year, CFA's Annual National Survey of bank fees has found fees for routine services rising sharply for most depositors. High balance requirements and high fees have combined to make interest-bearing checking accounts unavailable to nearly half of all American families. Even a family willing to forego a chance to earn interest will pay, on the average, $98 for a low-balance, non-interest checking account. Bounced check fees now range as high as $40.

Including all fees, the cost of the average NOW account to a small depositor has risen 12.3% in just one year, after a 13.1% increase in the previous year. The cost of a small checking account has increased 3.3% in the past year, on top of a 5.2% increase the year before. Bounced check charges, which rose 4.8% in 1984-1985, climbed an additional 5.6% in 1985-1986.

These conclusions are based on an April 1986 survey of fees in 18 states and the District of Columbia, designed by Consumer Action of San Francisco and Consumer Federation of America (CFA), and conducted by those organizations and 20 other state and local consumer organizations. Survey participants are listed on the cover.

In all, 113 banks and 112 thrifts were surveyed. Comparable data from CFA's 1985 survey was available for 92 institutions and provided the basis for 1985 to 1986 comparisons. All such comparisons in this report are based only on institutions surveyed in both years. 1984 to 1985 comparisons are based on 38 institutions that were surveyed both years.

STATEMENT SAVINGS

Minimum Balance to Earn Interest

Only 86 of the 224 institutions offering statement savings accounts (38%) pay interest on all amounts in those accounts. The other 138 (62%) require balances between $1 and $500 before a depositor will receive interest, with an average of $85 required. (Table 1)

Monthly Fees and Minimum Balances

171 of the institutions -- over 76% -- charge fees for maintenance of savings accounts. Four charge regardless of the balance maintained, but most tie fees to an average monthly or quarterly balance, a minimum daily balance, or an end of period balance. Regardless of the method, balance requirements are generally over $150, and can range up to $500. Most institutions which charge fees use either a minimum balance or an end of period balance, combined in the table under the "low balance" heading. (Table 2)

When the balance in an account falls below the minimum, fees are charged monthly by 131 institutions (77%), with an average charge of $1.52 per month. Forty institutions (23%) charge quarterly, with an average charge of $3.09. The highest charge, at three different institutions, is $5 per month, but the worst combination of fee and balance requirements is, for the second straight year, Western State Bank in Minnesota, which charges $4 per month for balances below $400. A $350 depositor there will earn less than $20 per year in interest, but will pay $48 in fees. (Table 3)

Transaction Fees

Seventy-one institutions (32%) charge savings account holders fees if they make withdrawals in excess of a certain number per month or quarter. Several other institutions link withdrawal fees to maintaining a minimum balance or to a combination of minimum balance requirements and free withdrawal limits. A few do not charge for withdrawals, but charge account holders either a one-time or a periodic fee for access to their accounts through ATMs.

Withdrawal limits based on activity average over 2.5 free withdrawals per month. The cost of an excess withdrawal ranges from $.05 to $3.00, with a $1.00 average. (Table 4)

Combined Consumer Impact

We analyzed these accounts to see what the net costs or income would be for a small savings account with an average balance of under $300, falling under $200 every other month. We assumed 6 withdrawals per year, and included interest income without compounding. In most markets, savings accounts are the only savings option available for such a small amount of money.

Under these assumptions, 9 of the 224 savings accounts (4%) received no interest. Fifty-three (24%) were subject to monthly or quarterly fees during at least some periods, and 5 (2%) to various withdrawal fees. In all, fees, failure to pay interest, or a combination of factors mean that small depositors would be paid less than the full amount of interest, or would pay more in fees than they receive in interest at 59 institutions -- or over one in four surveyed.

1985 v. 1986

The good news about savings accounts is that little has changed in the past year. We were able to compare account fees and conditions at 92 institutions for 1985 and 1986. Sixteen charged no fees in either year. Three others instituted fees for the first time. Among the 73 which charged fees in both years, there were a few increases and decreases, with the average fee unchanged. Balance requirements were virtually unchanged as well.

Another factor which did not change was the rate of interest paid on savings accounts. Although savings account rates were deregulated just before the survey was conducted, just four institutions pay an annual rate of over 5.5%. Six still pay less than 5.25%, with Philadelphia National Bank at the bottom with a 4% account.

NOW ACCOUNTS

NOW, or interest-bearing checking accounts are designed to combine the interest payments of savings accounts with the transaction features of checking accounts. But most consumers have only a few hundred dollars to put in their day-to-day transaction account. For them, NOW accounts, despite interest rates of 5.25%, can cost as much or more than non-interest checking accounts. A combination of high balance requirements and hefty fees leaves small account holders with the potential for fees well in excess of $100 a year in nearly every market studied. Fees have increased sharply in the past year, but good deals are still available; for identical accounts in different institutions, consumers might pay as much as $210 or earn as much as $12 in a year.

Minimums to Avoid Charges

Minimum balance requirements to avoid monthly or per transaction fees vary widely, but the national averages for these requirements are quite high. The 89 institutions (40%) which require an average monthly balance require between $100 and $5000, with an average of over $1400. The 156 institutions (70%) which use low balance requirements (some use both) require between $50 and $5000, with an average of $866. (Table 5)

The significance of these figures is revealed by comparing them to data from the Federal Reserve Board's Survey of Consumer Finances. That survey, conducted in 1983, found that 40% of all American families have less than $1000 in financial assets of any type, and another 20% have only $1,000 to $5,000.

The average family with an income under $20,000 has less than $1,000 in checking and savings accounts combined, and few if any other financial assets. The median balance in a checking account held by a family with income of $10,000 to $19,999 is $400--excluding the 23% of such families who do not have checking accounts. Even among the wealthiest families, those with incomes over $50,000, the median size of a checking account in 1983 was just $1,700. For the average American family, high balance requirements make interest-bearing checking accounts prohibitively expensive.

Charges

Of 224 institutions with Regular NOW accounts, only one charges no monthly or per transaction fees. Most - 142, or 63% - charge a monthly fee on all balances or on balances below a minimum, and 80 (36%) charge both a monthly fee and a per check fee. One charges only by the check. Some also charge for automatic teller machine withdrawals (see separate section on ATMs).

Some institutions charge different fees at different balance levels, and some charge for checks only in excess of a certain number per month. We analyzed the charges for average balances of just under $500, minimum balances of just under $300, and ten checks per month. We also assumed that cancelled checks would be returned, which can cost consumers as much as $10 extra per month, and in some cases is not permitted at any price. Under those circumstances, monthly fees range from $1.50 to $17, with an average of $5.70. Charges per check range from $.12 to $.50, and average $.24. (Table 6)

Combined NOW Account Costs

When all factors are considered, including interest income, NOW accounts can cost small depositors as much as $210 a year.

For this analysis, we calculated the fees which would be charged to a consumer with a $500 average balance which falls below $300 at least once a month, who writes ten checks and makes four ATM withdrawals a month, and who bounces two checks and has one returned deposit per year.

The average NOW account costs such a consumer about $83 a year. But the variation is great. At a handful of institutions, fees are low enough that consumers receive net income. In every area, at least one institution costs consumers $90 a year, and in most, accounts which cost over $120 -- $10 a month -- can be found. (Table 16)

Banks v. Savings and Loans

In nearly every area surveyed, small account holders with NOW accounts in savings and loans fare far better than their counterparts at banks.

The average cost of a NOW account at a bank is $102 a year, nearly 60% more than the $64 average of identical accounts at savings and loans. Only in Austin, Texas and Rhode Island were thrifts more expensive than banks. (Table 16)

Minimum balance requirements also vary widely between banks and S&Ls. Banks using average balance methods require an average of almost $1800 to avoid fees, while S&Ls using the same method require an average of just over $600. Banks using low balance methods require $1250 on the average, while S&L minimum balances average just under $550. (Table 11)

1985 v. 1986

Eighty-eight institutions offering NOW accounts were also included in the 1985 survey. In 1986, the average annual charge by these institutions to small account holders is $83.52, almost exactly the average for all NOW accounts. In 1985, charges for the same accounts at the same institutions cost an average of $74.36. Fees at those institutions have thus increased 12.3% in just one year.

NON-INTEREST CHECKING ACCOUNTS

Despite the availability of interest-bearing accounts, many consumers keep non-interest checking accounts for their day-to-day transactions. These accounts cost banks nothing in interest and, with the advent of automation, should not be significantly more costly to maintain than in the past.

But the days of "free checking" are over. The 155 institutions which offer non-interest accounts, most of them banks, charge between $22 and $184 annually for a low-balance checking account with relatively few transactions. The average account costs $98.

Minimums to Avoid Charges

Most of the institutions require account holders to maintain several hundred dollars, interest-free, to avoid charges. Eleven (7%) charge consumers for checking accounts no matter how large a balance is maintained, and 8 others (5%) have no monthly or transaction fees and thus no balance requirements. Of the remaining 136 institutions with fees based on balance levels, the 56 (41%) that use average balance methods require an average of $735 to avoid fees, with a range of $100 to $1200. The 105 institutions (77%) that use low balance methods average $436, with a low of $100 and a high of $1500, and some calculate both ways. In New York, no institution using either method has a minimum balance less than $1000, and most other areas have at least one bank which requires that high a balance. (Table 9)

Charges

Sixty-three accounts charge a monthly fee for all accounts or for those which fail to meet balance requirements, 4 charge only for every check, and most, 80 accounts, charge both fees. Some of these charge as well for ATM withdrawals (see separate section on ATMs). As with NOW accounts, fees may vary further at a particular bank based on balances or number of checks written . In calculating averages, we used the charges for accounts with $200 average balances, $100 minimum balances, and ten checks per month, and assumed a consumer would pay extra if necessary to receive cancelled checks.

The average monthly charge was $4.19, and the average per check charge was $.24. Monthly fees were as high as $12, and never below $1. Check charges ranged from $.10 to $.50. (Table 10)

Combined Non-interest Checking Charges
Charges for checking accounts ranged between $22 and $184 per year, and averaged $98, when all factors were considered. We calculated these averages assuming an average monthly balance of $200, falling below $100 at least once a month, ten checks and four automatic teller withdrawals per month, and two bounced checks and one returned deposit per year. (Table 16)

1985 v. 1986
In 1985, only banks' non-interest accounts were surveyed. Forty-six of the banks surveyed in 1986 were also surveyed in 1985. Those banks charged small depositors an average of $108.32 in 1986, well above the average for all institutions, but only slightly above the average for banks in the full survey. That figure is a 3.3% increase over the 1985 average of $104.89 for the same accounts at the same institutions.

"NO-FRILLS" ACCOUNTS

How Available and at What Cost?
The banking industry claims that low-cost "basic" or "no-frills" accounts are widely available as inexpensive alternatives for consumers. We attempted to test this claim in two ways.

First, we asked all institutions to recommend an account for a low-balance customer who writes 8 checks per month. Since the industry has touted shifting such customers to ATM machines in order to cut costs, we did not mention such withdrawals, assuming that low-cost alternative accounts would encourage ATM use by making use free. Interviewees were asked if they would suggest a checking or NOW account previously described or a different account, or if they would say no account was suitable. 117 (52%) recommended one of the institution's regular accounts, and 48 (21%) said no account was appropriate. Only 60 (27%) recommended an alternative account.

Many of the recommendations would not have been very helpful to low-balance depositors. Interviewers were frequently steered to high-balance, high-cost NOW accounts with the assurance that fees of $5 a month or more would be offset by interest income, even though the account we described would only earn about $10 a year.

There is no standard definition of a "basic" account, but most in the industry seem to regard them as no-balance accounts, where fees are charged regardless of the account balance. For our second analysis, presented in Table 14, we defined a "basic" account as such an account or as one with no regular fees, provided that the account was recommended as a low-balance account in the interview. In contrast to analyses of other accounts, we assumed that such a customer would accept check truncation to reduce costs.

Only 61 of the 225 institutions (27%) offer accounts meeting this definition. They were not distributed evenly around the country. For example, 6 of the accounts are located in Boise, Idaho and only one in Boston.

Nor are the accounts inexpensive. Under the assumptions we used -- 8 checks and 6 ATM withdrawals per month, 2 bounced checks and a returned deposit each year, cancelled checks not returned -- the average cost of these accounts was over $75. Some cost over $100. Citibank, in New York City, for example, charges $4 per month, plus $.75 per check or ATM withdrawal after the first 6, which adds $6 per month to the costs in this example. Including the other factors, the total cost is $138, $6 more than the same customer would pay for an ordinary Citibank checking account. Even if only 8 checks or withdrawals are made each month, this account would cost $84 per year.

OTHER ACCOUNT CHARGES

Bounced Checks

Every institution surveyed charges at least $5 for writing a check for which there are insufficient funds. The charge ranges as high as $40. Nationally, the average charge is almost $14. (Table 7)

We were able to compare 1985 and 1986 data for 92 institutions. The average bounced check charge at these institutions increased from $13.04 to $13.77, a 5.6% increase.

Returned Deposit Charges

64% of the surveyed institutions -- 144 of 225 -- now charge if a deposited check is subsequently returned. These charges range from $1 to $25, and average almost $5. In some areas, few institutions surveyed have such a charge, while in Boston and Buffalo every institution surveyed reported such a charge. (Table 7)

Automatic Teller Machine Withdrawal Charges

Over 90% of the institutions surveyed allow access to NOW or checking accounts or both through automatic teller machines (ATMs). Most do not charge for ATM withdrawals, or only charge if minimum balance requirements are not met and there is a charge for checks as well as ATM withdrawals.

Under the minimum balance assumptions previously used, 51 NOW accounts (23%) and 58 checking accounts (37%) require fees for ATM withdrawals. These fees are usually the same as the institutions' per check charges ($.10 to $.50), and occasionally a little lower. The charges average $.24 for both types of accounts (Table 12).

In addition to these per transaction charges, some institutions now charge an annual fee for use of an ATM card. Eight institutions levy such a charge for one or more of their accounts, with most charging $12 to $18 a year for ATM access.

Cashing Government Checks

One thing hasn't changed much: People who cannot afford bank service charges and rely on government benefit checks have an extremely difficult time cashing their checks at banks and savings and loans.

Over 72% of the institutions surveyed would not cash a government check for a noncustomer at any price. Only 26 institutions -- 11.6% -- would cash a check for free. Another 36 charged an average of $3.28 for a $300 check; many have variable charges depending on the amount of the check. (Table 8)

Data on check cashing is a little difficult to interpret because many institutions give individual branches authority to determine policies. There may have been a modest increase in the number of institutions cashing government checks for free, but branch autonomy practices may account for all or part of this improvement.

OTHER INFORMATION

Identification Requirements

63.2% of the institutions surveyed require two pieces of identification to open an account, one of which must usually be a picture ID. 35.5% require only one piece, usually with a picture, and 1.4% require three pieces. Identification requirements at a particular institution were usually the same for both checking and NOW accounts.

13.5% of the NOW accounts surveyed and 11.6% of all noninterest accounts require a depositor to have a major credit card to open an account. This is a significant barrier to low- and moderate-income consumers; only 42% of all families have bankcards, and their median income, $30,000, is well above the national average. Credit card requirements were more widespread than expected, with institutions requiring a credit card located in Minnesota, Wisconsin, Maryland, Kansas, Arizona, Massachusetts, Florida, Idaho, Ohio, Michigan, New York, Illinois and Washington, DC.

In some cases, stiff identification requirements render otherwise attractive accounts inaccessible. First National Bank of Chicago, for example, offers a checking account with only a $100 average balance required to avoid fees, but requires three pieces of identification including a credit card to open the account.

Free Accounts for Senior Citizens and Minors

Many institutions have free accounts, or will waive routine fees on regular accounts, for senior citizens and minors. Few interest-bearing checking accounts are offered free; seniors can get fees waived on 39% of such accounts, and minors at only 4%. But noninterest checking accounts are often available free to seniors; 60% will waive seniors' fees, while only 5% will do so for minors. Another 5% are free to all customers.

23% of all savings accounts are free to consumers regardless of age. Another 23% are available free to seniors, and 46% will waive fees for minors. Some institutions require direct deposit of Social Security or other benefit checks as a condition for waiving fees, particularly on NOW accounts. Institutions define "seniors" at a variety of ages between 55 and 65.

Opening Balance Requirements

At most institutions, balance requirements to avoid fees serve to discourage small depositors. In some instances, high opening deposit requirements compound the problem.

About 80% of all institutions impose an opening balance requirement on each of the three types of accounts. These requirements are particularly high on NOW accounts, averaging over $425. In two areas, Louisiana and New York City, averages exceed $1000. (Table 13)

THE BIGGEST BANKS AND SAVINGS & LOANS

Information was compiled separately on the ten largest banks and ten largest savings and loans in the nation, as measured by deposits. Two large banks were excluded because they handle few consumer dollars.

The results of this compilation are mixed. These institutions tend to have substantially higher balance requirements to avoid fees. Their fees for failing to meet balance requirements are about 10% above the national averages. Their bounced check charges, however, are well below average -- $10.68 v. $13.92 -- largely because 17 of the 20 institutions are located in California and New York which, along with Idaho, have the lowest bounced check charges in the country. In fact, if Mellon Bank's $30 charge, second highest in the country, is excluded, bounced check charges average just $9.66

Total fees for small depositors are little different at these institutions than at others around the country. But the higher balance requirements make a big difference to many larger depositors. A $1475 average balance in a NOW account is enough in most cases to avoid fees and receive interest. But at every one of the 10 largest banks, a $1475 account will incur fees. Two banks will not pay interest on $1475, effectively an annual penalty of $80. In fact, 3 of the 10 banks will not even open an account for $1475, even though that amount is substantially above average monthly take-home pay.

METHODOLOGY

All surveys were conducted during a two-week period in April 1986. The survey form was designed by CFA and Consumer Action, with comments and assistance from many participating groups. Surveys were conducted by phone in most instances, with some groups interviewing face-to-face or submitting the forms by mail.

All completed interviews were reviewed in detail by CFA, which asked participating groups to collect additional information where necessary to fill in missing data, explain ambiguities, or correct answers which appeared to be incorrect or inconsistent.

Participating groups were asked to survey 5 banks and 5 thrifts in their area, and to select institutions which, by their size or visibility, were most active in the market. They were also asked to survey, to the extent possible, institutions surveyed in 1985. Most surveys were conducted in a single metropolitan area, but where state names are used in the tables, data was collected from more than one city. The wide variety of states involved, with data from every region of the country and from large metropolitan areas and smaller urban centers and towns means that the information, while not collected from a random sample, is probably reasonably indicative of national patterns.

The survey was administered by CFA Legislative Assistant Dina Zarin, who kept in close contact with all the groups involved at every stage of the process, and conducted 22 of the 225 interviews. The survey could not have been conducted in such a comprehensive and accurate manner without her dedication and hard work.

The report authors:

Alan Fox, Legislative Representative for Consumer Federation of America, has represented CFA before Congress and federal regulatory agencies since 1984. He supervised collection of the data, analyzed the results, and was primarily responsible for writing this report.

Ken McEldowney, Director of San Francisco Consumer Action, has conducted a variety of financial services cost surveys in California in the past 12 years. The survey instrument was based largely on his California surveys. He also advised participating local organizations on conduct and release of the survey and analyzed these results.

Table 1
Savings Accounts -- Minimum to Earn Interest

Area	No Min.	High	Low	Ave.
Milwaukee	6	250	10	115.00
Minnesota	4	300	10	106.00
Flint	5	1	1	1.00
Philadelphia	1	250	50	116.67
Buffalo	0	250	1	113.10
St. Louis	6	50	5	21.25
Madison	6	100	10	46.25
Maryland	5	350	1	76.80
Kansas	0	120	1	43.86
California	12	250	10	130.00
Austin	6	100	5	68.33
Cleveland	2	100	1	37.88
Arizona	5	100	10	40.00
New York City	3	300	25	139.29
Rhode Island	1	100	25	87.50
Boston	0	200	1	82.10
Tallahassee	3	250	10	71.43
Idaho	4	200	20	70.00
Detroit	3	200	1	64.71
Iowa	5	200	5	83.00
Louisiana	6	100	10	55.00
Washington DC	3	500	50	178.57
USA's Largest	14	250	10	122.50
TOTAL	86	500	1	84.93

Table 2
Savings Accounts -- Balance to Avoid Fees

Area	No Fees	Always Fees	AVE. BALANCE		LOW BALANCE	
			Number	Average	Number	Average
Milwaukee	1	0	6	83.33	3	100.00
Minnesota	1	0	0	0.00	8	250.00
Flint	2	0	2	150.00	4	150.00
Philadelphia	5	0	1	300.00	4	125.00
Buffalo	2	0	3	150.00	5	140.00
St. Louis	3	0	3	150.00	4	112.50
Madison	2	0	3	83.33	5	70.00
Maryland	4	1	6	229.17	9	156.11
Kansas	2	0	3	133.33	2	75.00
California	2	0	4	225.00	8	137.63
Austin	3	0	3	100.00	3	133.33
Cleveland	1	1	5	90.00	3	100.00
Arizona	2	0	1	200.00	5	242.00
New York City	2	1	4	475.00	3	133.33
Rhode Island	2	0	0	0.00	5	100.00
Boston	4	0	2	10.00	4	137.50
Tallahassee	1	0	2	350.00	7	250.00
Idaho	1	0	3	133.33	6	75.00
Detroit	3	0	3	250.00	4	237.50
Iowa	3	1	2	175.00	4	137.50
Louisiana	6	0	1	50.00	3	58.33
Washington DC	1	0	5	250.00	4	300.00
USA's Largest	3	0	8	343.75	9	125.11
TOTAL	53	4	63	183.25	104	154.00

Table 3
Savings Accounts -- Fee if Below Minimum Balance

Area	No Fees	CHARGED MONTHLY Number	CHARGED MONTHLY Average	CHARGED QUARTERLY Number	CHARGED QUARTERLY Average
Milwaukee	1	9	1.14	0	0.00
Minnesota	1	8	2.25	0	0.00
Flint	2	5	1.90	1	3.00
Philadelphia	5	4	1.06	1	1.00
Buffalo	2	4	1.13	4	2.50
St. Louis	3	5	1.20	2	4.50
Madison	2	7	1.18	1	3.00
Maryland	4	11	2.00	5	3.20
Kansas	2	5	1.80	0	0.00
California	2	7	1.14	5	3.20
Austin	3	6	1.50	0	0.00
Cleveland	1	6	1.00	3	1.67
Arizona	2	3	1.00	3	2.83
New York City	2	7	1.57	1	4.00
Rhode Island	2	5	1.00	0	0.00
Boston	4	6	1.67	0	0.00
Tallahassee	1	5	1.80	4	2.75
Idaho	1	6	1.67	3	2.17
Detroit	3	6	1.71	1	3.50
Iowa	3	7	2.07	0	0.00
Louisiana	6	2	1.00	2	2.50
Washington DC	1	6	1.50	3	5.67
USA's Largest	3	11	1.45	6	3.67
TOTAL	53	131	1.52	40	3.09

Table 4
Savings Accounts -- Excess Withdrawal Fees

Area	No Limit	With Limit	Average Limit/Mo.	CHARGE IF OVER LIMIT High	Low	Average
Milwaukee	6	4	2.25	1.00	0.25	0.45
Minnesota	7	2	3.00	2.00	2.00	2.00
Flint	8	0	0.00	0.00	0.00	0.00
Philadelphia	10	0	0.00	0.00	0.00	0.00
Buffalo	7	3	3.11	1.00	0.50	0.83
St. Louis	7	3	7.00	1.00	0.50	0.83
Madison	6	4	3.75	1.00	0.50	0.75
Maryland	15	5	1.27	3.00	0.25	1.65
Kansas	4	3	2.33	1.00	1.00	1.00
California	11	3	1.00	1.00	1.00	1.00
Austin	5	4	1.50	1.00	0.50	0.88
Cleveland	8	2	3.33	0.50	0.50	0.50
Arizona	3	5	1.00	1.00	0.50	0.80
New York City	9	1	1.00	0.75	0.75	0.75
Rhode Island	7	0	0.00	0.00	0.00	0.00
Boston	8	2	3.00	0.50	0.05	0.28
Tallahassee	5	5	1.40	1.00	0.50	0.90
Idaho	4	6	3.67	2.00	0.50	1.08
Detroit	8	2	7.50	0.75	0.50	0.63
Iowa	7	3	2.67	1.00	0.25	0.75
Louisiana	3	7	2.14	2.00	1.00	1.14
Washington DC	4	6	1.78	2.00	0.50	1.33
USA's Largest	15	5	1.40	2.00	0.75	1.15
TOTAL	153	71	2.56	3.00	0.05	0.99

Table 5
NOW Accounts -- Minimum to Avoid Fees

Area	No Fees	Fees Always	AVERAGE BALANCE No.	High	Low	Ave.	LOW BALANCE No.	High	Low	Ave.
Milwaukee	0	0	7	1500	250	964.29	6	1000	500	750.00
Minnesota	0	0	0	0	0	0.00	9	1000	200	611.11
Flint	0	0	5	1000	500	695.20	4	1000	500	687.50
Philadelphia	0	0	3	2000	300	866.67	8	1500	100	825.00
Buffalo	0	0	3	2500	500	1333.33	9	1000	200	833.33
St. Louis	0	2	3	2000	750	1250.00	6	1000	100	675.00
Madison	0	0	5	2000	750	1350.00	7	1000	300	692.86
Maryland	0	0	7	1000	100	614.29	13	1500	100	584.62
Kansas	0	0	3	1500	500	1000.00	4	2000	300	887.75
California	0	0	5	3000	2000	2300.00	13	2000	500	946.15
Austin	0	0	5	2500	250	1100.00	3	1000	750	833.33
Cleveland	1	0	2	3000	1500	2250.00	8	2000	50	887.50
Arizona	0	1	2	3000	2500	2750.00	7	2500	100	1121.43
New York City	0	0	5	5000	200	2340.00	5	5000	500	2100.00
Rhode Island	0	0	1	1500	1500	1500.00	6	1500	400	791.67
Boston	0	1	6	1000	700	950.00	3	1500	500	833.33
Tallahassee	0	0	5	2500	100	1820.00	9	1500	100	900.00
Idaho	0	0	4	3000	750	1687.50	8	2500	300	950.00
Detroit	0	0	6	5000	1000	2583.33	7	1500	300	700.00
Iowa	0	0	2	1300	400	850.00	9	1000	200	594.44
Louisiana	0	1	4	2500	100	825.00	5	3000	500	1700.00
Washington DC	0	0	5	3000	500	1500.00	6	2500	500	958.33
USA's Largest	0	0	8	5000	1500	2750.00	15	5000	500	1220.00
TOTAL	1	5	89	5000	100	1414.34	156	5000	50	866.03

Table 6
NOW Accounts -- Fee if Below Minimum Balance

Area	CHARGE/MONTH High	Low	Average	CHARGE/CHECK High	Low	Average	CHARGE BY Mo	Ck	Both
Milwaukee	10.00	3.00	5.75	0.30	0.15	0.23	4	0	6
Minnesota	12.00	3.00	7.78	0.25	0.20	0.23	6	0	3
Flint	10.00	4.00	6.81	0.25	0.20	0.23	4	0	4
Philadelphia	7.00	3.00	4.85	0.25	0.15	0.23	5	0	5
Buffalo	6.00	3.00	5.00	0.25	0.25	0.25	10	0	1
St. Louis	8.00	3.00	6.15	0.00	0.00	0.00	10	0	0
Madison	6.00	4.00	5.30	0.25	0.15	0.22	3	0	7
Maryland	7.50	2.00	5.58	0.50	0.35	0.39	16	0	4
Kansas	10.00	2.00	5.29	0.15	0.15	0.15	6	0	1
California	8.00	4.00	5.39	0.30	0.15	0.22	11	0	3
Austin	17.00	5.00	8.19	0.15	0.15	0.15	5	0	3
Cleveland	6.00	3.00	4.50	0.25	0.15	0.22	3	1	5
Arizona	7.50	4.00	6.13	0.25	0.25	0.25	7	0	1
New York City	10.00	5.00	6.80	0.50	0.25	0.31	6	0	4
Rhode Island	5.00	1.50	3.07	0.40	0.25	0.36	3	0	4
Boston	5.00	2.25	3.23	0.30	0.15	0.25	2	0	8
Tallahassee	8.00	3.00	5.30	0.25	0.20	0.22	5	0	5
Idaho	6.00	3.00	5.10	0.15	0.15	0.15	7	0	3
Detroit	12.00	3.00	6.90	0.36	0.25	0.30	4	0	6
Iowa	9.00	2.50	5.15	0.20	0.12	0.17	6	0	4
Louisiana	9.00	3.00	6.10	0.25	0.25	0.25	8	0	2
Washington DC	12.00	3.00	6.40	0.20	0.20	0.20	9	0	1
USA's Largest	10.00	4.00	6.40	0.50	0.15	0.28	13	0	7
TOTAL	17.00	1.50	5.70	0.50	0.12	0.24	142	1	80

Table 7
Bounced Check and Returned Deposit Fees

Area	BOUNCED CHECKS High	Low	Average	RETURNED DEPOSITS None	High	Low	Average
Milwaukee	18.00	10.00	12.80	3	10.00	2.00	4.93
Minnesota	15.00	9.00	11.78	2	10.00	1.00	4.14
Flint	20.00	11.00	13.75	7	10.00	10.00	10.00
Philadelphia	40.00	15.00	24.40	2	5.00	2.00	2.63
Buffalo	12.00	7.00	9.36	0	10.00	1.25	4.68
St. Louis	20.00	5.00	14.05	4	20.00	2.00	6.75
Madison	15.00	10.00	11.90	3	15.00	2.00	7.07
Maryland	27.50	15.00	19.88	2	25.00	2.00	7.14
Kansas	17.00	10.00	12.00	5	10.00	5.00	7.50
California	10.00	10.00	10.00	1	10.00	1.50	4.00
Austin	15.00	12.00	14.39	4	15.00	1.00	4.40
Cleveland	18.00	12.50	15.05	5	10.00	2.00	3.90
Arizona	15.00	10.00	10.69	6	10.00	2.00	6.00
New York City	10.00	5.00	7.25	1	10.00	1.25	4.61
Rhode Island	15.00	12.00	13.71	1	3.00	1.50	1.75
Boston	20.00	10.00	13.95	0	10.00	1.00	4.00
Tallahassee	20.00	14.00	16.00	5	5.00	1.75	2.75
Idaho	10.50	9.00	9.75	8	10.50	1.00	5.75
Detroit	20.00	10.00	15.00	7	15.00	2.00	6.50
Iowa	20.00	10.00	12.70	7	15.00	1.00	6.00
Louisiana	17.00	7.00	13.70	6	10.00	1.00	4.25
Washington DC	22.00	15.00	19.00	2	20.00	2.00	5.81
USA's Largest	30.00	7.00	10.68	1	10.00	1.25	4.00
TOTAL	40.00	5.00	13.92	81	25.00	1.00	4.97

Table 8

Cashing Government Checks

Area	Never	Yes, No Charge	Yes, Charge	Average Charge*
Milwaukee	8	2	0	0.00
Minnesota	4	2	3	7.33
Flint	5	0	3	2.00
Philadelphia	10	0	0	0.00
Buffalo	8	3	0	0.00
St. Louis	8	2	0	0.00
Madison	4	2	4	2.75
Maryland	18	0	2	1.25
Kansas	4	2	1	4.00
California	9	1	4	3.00
Austin	6	1	2	4.00
Cleveland	9	1	0	0.00
Arizona	2	1	5	3.40
New York City	9	1	0	0.00
Rhode Island	6	1	0	0.00
Boston	10	0	0	0.00
Tallahassee	8	1	1	3.00
Idaho	4	2	4	2.63
Detroit	6	1	3	2.00
Iowa	8	1	1	2.00
Louisiana	7	1	2	2.00
Washington DC	9	1	0	0.00
USA's Largest	14	2	4	4.50
TOTAL	163	26	36	3.28

*For a $300 check.

Table 9
Checking Accounts -- Minimum to Avoid Fees

Area	No Fees	Fees Always	AVERAGE BALANCE No.	High	Low	Ave.	LOW BALANCE No.	High	Low	Ave.
Milwaukee	0	0	6	1000	250	666.67	8	300	200	281.25
Minnesota	0	0	0	0	0	0.00	7	400	200	300.00
Flint	0	1	3	700	300	566.67	3	300	200	266.67
Philadelphia	1	0	2	1000	1000	1000.00	6	600	200	383.33
Buffalo	0	0	2	500	500	500.00	5	500	200	360.00
St. Louis	1	0	1	500	500	500.00	4	500	300	400.00
Madison	1	1	4	1000	500	725.00	6	500	200	383.33
Maryland	0	2	3	500	100	366.67	6	500	300	400.00
Kansas	0	2	0	0	0	0.00	4	501	500	500.25
California	0	0	4	1000	1000	1000.00	7	900	250	521.43
Austin	0	1	1	750	750	750.00	2	500	500	500.00
Cleveland	1	0	2	1000	500	750.00	3	1500	500	1000.00
Arizona	1	0	0	0	0	0.00	5	500	400	450.00
New York City	0	0	3	1000	1000	1000.00	2	1500	1000	1250.00
Rhode Island	0	0	1	600	600	600.00	6	600	200	433.33
Boston	1	1	4	500	400	475.00	2	300	300	300.00
Tallahassee	1	0	5	1000	1000	1000.00	5	500	200	440.00
Idaho	0	1	1	400	400	400.00	5	300	100	260.00
Detroit	0	0	6	1200	1000	1033.33	5	700	500	560.00
Iowa	1	1	2	400	100	250.00	5	500	250	350.00
Louisiana	0	0	1	700	700	700.00	5	800	250	630.00
Washington DC	0	0	4	1000	500	825.00	4	500	200	350.00
USA's Largest	0	1	7	1000	100	871.43	9	1500	250	683.33
TOTAL	8	11	56	1200	100	734.82	105	1500	100	435.72

Table 10
Checking Accounts -- Fee if Below Minimum Balance

Area	CHARGE/MONTH High	Low	Average	CHARGE/CHECK High	Low	Average	CHARGE BY Mo	Ck	Both
Milwaukee	10.00	2.00	4.17	0.30	0.20	0.24	2	0	7
Minnesota	12.00	3.00	5.57	0.25	0.25	0.25	4	0	3
Flint	5.00	2.00	3.90	0.25	0.20	0.23	2	1	3
Philadelphia	5.00	2.00	3.08	0.25	0.15	0.23	2	0	4
Buffalo	5.00	1.00	2.86	0.30	0.15	0.23	5	0	2
St. Louis	6.00	3.00	5.00	0.00	0.00	0.00	6	0	0
Madison	4.00	2.00	2.94	0.25	0.20	0.23	1	0	7
Maryland	10.25	2.00	3.88	0.35	0.20	0.30	2	1	8
Kansas	7.00	3.00	5.00	0.20	0.15	0.18	4	1	1
California	6.00	1.50	3.75	0.30	0.15	0.23	3	0	5
Austin	7.00	3.50	5.13	0.15	0.10	0.13	1	0	3
Cleveland	4.00	2.75	3.35	0.25	0.17	0.22	0	0	5
Arizona	5.00	1.50	3.90	0.25	0.25	0.25	4	0	1
New York City	10.00	6.00	7.20	0.50	0.25	0.33	2	0	3
Rhode Island	5.00	1.50	2.93	0.40	0.25	0.36	3	0	4
Boston	6.00	2.50	3.64	0.30	0.20	0.26	3	0	4
Tallahassee	7.00	3.00	4.20	0.25	0.18	0.22	1	0	4
Idaho	5.00	2.00	3.33	0.25	0.10	0.17	2	1	4
Detroit	6.00	2.75	3.88	0.36	0.25	0.31	0	0	5
Iowa	6.00	1.50	3.86	0.20	0.12	0.17	3	0	4
Louisiana	9.00	5.00	7.25	0.00	0.00	0.00	6	0	0
Washington DC	7.50	3.00	5.36	0.20	0.20	0.20	6	0	1
USA's Largest	10.00	1.50	4.71	0.50	0.15	0.27	5	0	9
TOTAL	12.00	1.00	4.19	0.50	0.10	0.24	63	4	80

Table 11
NOW Accounts -- Minimum to Avoid Fees -- Banks vs. S&Ls

Area	BANKS No Fees	 Fees Always	 AVE. BAL. Ave.	 LOW BAL. Ave.	S & L No Fees	 Fees Always	 AVE. BAL. Ave.	 LOW BAL. Ave.
Milwaukee	0	0	1375.00	750.00	0	0	416.67	750.00
Minnesota	0	0	0.00	820.00	0	0	0.00	350.00
Flint	0	0	662.50	750.00	0	0	717.00	500.00
Philadelphia	0	0	1150.00	1100.00	0	0	300.00	366.67
Buffalo	0	0	1750.00	875.00	0	0	500.00	800.00
St. Louis	0	0	1250.00	1000.00	1	1	0.00	350.00
Madison	0	0	1666.67	912.50	0	0	875.00	400.00
Maryland	0	0	750.00	940.00	0	0	433.33	362.50
Kansas	0	0	1250.00	2000.00	0	0	500.00	517.00
California	0	0	2375.00	1375.00	0	0	2000.00	755.56
Austin	0	0	1125.00	1000.00	0	0	1083.33	750.00
Cleveland	0	0	2250.00	1500.00	1	0	0.00	275.00
Arizona	0	0	2750.00	1500.00	0	1	0.00	175.00
New York City	0	0	3666.67	4000.00	0	0	350.00	833.33
Rhode Island	0	0	1500.00	933.33	0	0	0.00	650.00
Boston	0	0	1000.00	500.00	0	1	850.00	1000.00
Tallahassee	0	0	2250.00	1300.00	0	0	100.00	400.00
Idaho	0	0	1687.50	1166.67	0	0	0.00	820.00
Detroit	0	0	2583.33	1000.00	0	0	0.00	475.00
Iowa	0	0	1300.00	780.00	0	0	400.00	362.50
Louisiana	0	0	2500.00	2000.00	0	1	266.67	500.00
Washington DC	0	0	1750.00	1625.00	0	0	500.00	625.00
USA's Largest	0	0	2857.14	2200.00	0	0	2000.00	730.00
TOTAL	0	0	1781.56	1199.34	2	4	614.32	549.39

Table 12
ATM Charges

Area	NOW ACCOUNTS No ATM	 No Charge	 # w/ Charge	 Ave. Charge	CHECKING ACCOUNTS No Charge	 # w/ Charge	 Ave. Charge
Milwaukee	1	6	3	0.22	5	3	0.22
Minnesota	0	6	3	0.20	4	3	0.20
Flint	3	3	2	0.20	3	2	0.20
Philadelphia	0	8	2	0.23	5	2	0.23
Buffalo	2	9	0	0.00	5	0	0.00
St. Louis	0	10	0	0.00	6	0	0.00
Madison	0	2	8	0.27	1	9	0.29
Maryland	1	16	3	0.25	5	6	0.22
Kansas	0	6	1	0.50	4	2	0.33
California	1	11	2	0.25	5	3	0.22
Austin	0	4	4	0.24	1	3	0.13
Cleveland	1	6	3	0.20	2	4	0.19
Arizona	0	8	0	0.00	5	1	0.25
New York City	0	8	2	0.25	3	2	0.25
Rhode Island	1	4	2	0.33	4	2	0.33
Boston	1	9	0	0.00	7	0	0.00
Tallahassee	1	6	3	0.22	2	4	0.22
Idaho	3	5	2	0.15	3	2	0.13
Detroit	1	4	5	0.26	0	6	0.33
Iowa	0	7	3	0.13	5	3	0.13
Louisiana	3	4	3	0.27	4	1	0.50
Washington DC	0	10	0	0.00	7	0	0.00
USA's Largest	1	16	3	0.27	10	4	0.24
TOTAL	19	154	51	0.24	88	58	0.24

Table 13
Opening Balance Requirements

Area	SAVINGS ACCOUNTS None	SAVINGS ACCOUNTS Avg.	NOW ACCOUNTS None	NOW ACCOUNTS Avg.	CHECKING ACCOUNTS None	CHECKING ACCOUNTS Avg.
Milwaukee	1	50.56	3	287.14	3	135.00
Minnesota	2	82.86	2	657.14	0	164.29
Flint	3	47.00	3	455.00	1	60.00
Philadelphia	3	89.29	0	280.00	2	140.00
Buffalo	3	110.71	5	475.00	5	400.00
St. Louis	2	88.75	1	333.89	1	125.00
Madison	0	57.50	0	271.00	0	95.00
Maryland	0	60.50	0	413.75	1	114.50
Kansas	1	64.17	2	82.00	0	91.67
California	0	100.00	1	192.31	1	114.29
Austin	2	107.86	0	190.63	0	237.50
Cleveland	4	48.33	2	293.75	3	191.67
Arizona	1	56.43	0	366.88	0	53.33
New York City	6	150.00	6	1037.50	4	200.00
Rhode Island	0	15.71	0	582.14	0	20.00
Boston	0	104.50	0	363.00	0	91.50
Tallahassee	0	81.00	0	360.00	0	150.00
Idaho	1	48.33	0	339.00	2	53.00
Detroit	4	85.00	4	145.83	3	75.00
Iowa	2	90.63	2	506.25	2	79.17
Louisiana	1	57.78	2	1287.50	3	133.33
Washington DC	0	76.00	0	611.00	0	192.86
USA's Largest	4	115.63	4	618.75	5	122.22
TOTAL	36	75.82	33	426.31	31	117.44

Table 14
Basic or No-Frills Accounts

Area	# of Accounts	# CHARGING BY Mo.	# CHARGING BY Ck.	# CHARGING BY ATM	AVERAGE CHARGE Mo.	AVERAGE CHARGE Ck.	AVERAGE CHARGE ATM	AVERAGE Yearly Cost
Milwaukee	2	1	1	1	6.00	0.40	0.40	99.60
Minnesota	2	2	1	0	3.50	0.20	0.00	70.35
Flint	1	1	0	0	1.00	0.00	0.00	34.00
Philadelphia	2	1	0	0	3.50	0.00	0.00	72.35
Buffalo	2	2	2	1	1.50	0.28	0.25	75.90
St. Louis	4	4	0	0	3.38	0.00	0.00	76.13
Madison	2	0	0	1	0.00	0.00	0.45	45.60
Maryland	6	5	3	2	2.80	0.25	0.18	86.70
Kansas	3	1	2	2	3.00	0.35	0.50	77.73
California	3	1	2	1	2.50	0.43	0.35	64.77
Austin	2	2	2	2	2.75	0.20	0.20	94.60
Cleveland	3	3	1	1	1.92	0.25	0.15	76.10
Arizona	3	2	1	1	3.25	0.20	0.20	60.87
New York City	5	4	3	0	3.50	0.40	0.00	88.94
Rhode Island	1	1	1	0	1.50	0.25	0.00	67.50
Boston	1	0	0	0	0.00	0.00	0.00	48.00
Tallahassee	1	1	0	0	5.00	0.00	0.00	81.50
Idaho	6	4	5	3	2.75	0.25	0.28	74.75
Detroit	2	1	2	2	1.00	0.40	0.40	103.20
Iowa	4	3	2	0	2.90	0.20	0.00	59.93
Louisiana	2	2	1	0	3.00	0.25	0.00	83.90
Washington DC	3	1	1	1	3.00	0.20	0.15	64.50
USA's Largest	7	4	5	1	3.25	0.40	0.35	83.24
TOTAL	61	43	31	18	2.87	0.29	0.30	75.32

Table 15
Checking Accounts -- Minimum to Avoid Fees -- Banks vs. S&Ls

	BANKS				S & L			
Area	No Fees	Fees Always	AVE. BAL. Ave.	LOW BAL. Ave.	No Fees	Fees Always	AVE. BAL. Ave.	LOW BAL. Ave.
Milwaukee	0	0	750.00	290.00	0	0	250.00	266.67
Minnesota	0	0	0.00	340.00	0	0	0.00	200.00
Flint	0	1	700.00	266.67	0	0	300.00	0.00
Philadelphia	1	0	1000.00	475.00	0	0	0.00	200.00
Buffalo	0	0	500.00	325.00	0	0	500.00	500.00
St. Louis	0	0	500.00	400.00	1	0	0.00	0.00
Madison	0	0	950.00	420.00	1	1	500.00	200.00
Maryland	0	1	500.00	400.00	0	1	100.00	0.00
Kansas	0	1	0.00	500.00	0	1	0.00	500.50
California	0	0	1000.00	625.00	0	0	1000.00	383.33
Austin	0	1	750.00	500.00	0	0	0.00	0.00
Cleveland	0	0	750.00	1000.00	1	0	0.00	0.00
Arizona	0	0	0.00	450.00	1	0	0.00	0.00
New York City	0	0	1000.00	1250.00	0	0	0.00	0.00
Rhode Island	0	0	600.00	433.33	0	0	0.00	433.33
Boston	0	0	500.00	300.00	1	1	400.00	0.00
Tallahassee	0	0	1000.00	440.00	1	0	0.00	0.00
Idaho	0	0	400.00	300.00	0	1	0.00	100.00
Detroit	0	0	1033.33	560.00	0	0	0.00	0.00
Iowa	0	0	400.00	350.00	1	1	100.00	0.00
Louisiana	0	0	700.00	725.00	0	0	0.00	250.00
Washington DC	0	0	825.00	350.00	0	0	0.00	350.00
USA's Largest	0	0	850.00	833.33	0	1	1000.00	383.33
TOTAL	1	4	797.87	463.69	7	7	405.56	323.86

Table 16
Combined Consumer Impact of Fees and Balance Requirements

	CHECKING						NOW					
	BANKS			S&Ls			BANKS			S&Ls		
Area	High	Low	Avg	High	Low	Avg	High	Low	Avg	High	Low	Avg
Milwaukee	120	91	107	144	75	105	135	64	98	118	15	74
Minnesota	105	87	99	184	130	157	153	55	108	156	21	90
Flint	127	48	91	90	90	90	161	79	119	99	59	82
Philadelphia	128	61	106	145	76	110	153	25	111	119	4	63
Buffalo	117	58	74	72	69	71	101	32	69	114	-1	63
St. Louis	129	80	103	64	64	64	117	74	98	69	-0	44
Madison	122	92	108	108	45	82	132	94	114	94	74	83
Maryland	157	95	129	76	42	59	143	79	117	122	16	56
Kansas	117	94	106	85	54	74	152	76	104	64	18	49
California	115	83	99	79	66	73	107	67	84	95	42	64
Austin	117	98	108				102	84	92	210	64	111
Cleveland	126	95	111	40	40	40	113	77	101	96	7	38
Arizona	80	69	78	30	30	30	134	55	81	52	-6	19
New York City	171	93	133				169	67	119	89	-1	56
Rhode Island	121	60	92	117	75	96	121	60	92	117	87	102
Boston	98	67	91	112	48	81	98	65	74	88	31	70
Florida	126	106	115	32	32	32	115	83	96	99	2	49
Idaho	81	68	76	79	62	71	90	66	75	64	31	50
Detroit	174	100	132				203	90	147	120	64	92
Iowa	110	77	95	38	22	30	113	51	91	76	-8	31
Louisiana	167	114	128	86	86	86	143	77	110	136	-12	54
Washington DC	132	76	116	118	93	105	160	74	113	133	45	88
Largest	171	28	109	89	66	77	169	67	119	117	42	69
TOTAL	174	28	105	184	22	80	203	25	102	210	-12	64
AVERAGE (Banks plus S&Ls)			98						83			

Costs in dollars, rounded to the nearest full dollar
Negative numbers represent net income to consumer

AARP

Statement

Of The

AMERICAN ASSOCIATION OF RETIRED PERSONS

On

H.R. 2282 "TRUTH IN SAVINGS ACT"

Before the

Subcommittee on

FINANCIAL INSTITUTIONS SUPERVISION,
REGULATION AND INSURANCE

Of The

Committee on

BANKING, FINANCE AND URBAN AFFAIRS

U.S. HOUSE OF REPRESENTATIVES
June 5, 1986

American Association of Retired Persons 1909 K Street, N.W., Washington, D.C. 20049 (202) 872-4700
Vita R. Ostrander *President* Cyril F. Brickfield *Executive Director*

Introduction

The American Association of Retired Persons (AARP) is the nation's largest membership organization, representing the interests of over 22 million members age 50 and over. The Association appreciates this opportunity to express its support for H.R. 2282 - the "Truth In Savings Act," and to recommend improvements in this important legislation.

H.R. 2282 represents an important step towards maintaining consumer confidence in the banking system and ensuring that financial institutions are responsive to the needs of all consumers. The mandated disclosures constitute an essential tool to enable consumers to make effective choices among various financial services and providers.

AARP's interest in financial services issues comes about as a direct response to the deregulation of the financial services industry. While deregulation has increased competition, it has also created a great deal of confusion. Consumers lack the basic information they need to make prudent choices.

In order for deregulation to improve the efficiency of the financial services marketplace through enhanced competition, it requires informed consumers who can act rationally. Therefore, there is a critical need for the ready availability of accurate, complete, up-to-date, and uniform information.

Disclosure of Interest Rates

AARP concurs in H.R. 2282's requirement that the Annual Percentage Yield (APY) and Annual Percentage Rate (APR) must both be disclosed in advertisements, announcements and solicitations of deposit accounts. Each of these rates is important to different groups of consumers. For consumers whose balances remain constant for the entire year, the APY is important. For consumers whose account balances vary during a year, the APR, with frequency of compounding duly noted, is more meaningful.

In addition, H.R. 2282 should be amended to require that interest rate disclosures be contained in the schedule of fees, charges, terms and conditions. Such disclosure of interest rates on the mandated schedule is essential to meaningful consumer choice.

Disclosure of Service Charges, Fees, and Other Deposit Account Data

AARP supports H.R. 2282's provision mandating the ready availability in a written schedule of all other terms, fees, and hidden costs. Such disclosures will be directly responsive to the needs of consumers for accurate and complete information. We urge the Committee to specifically require that the information from the schedule also be made readily available to the public via telephone.

In addition to those fees, penalties and practices already included in H.R. 2282's required schedule, we urge the Committee to include the following:

Interest Rates (APY & APR);
Frequency and Method of Compounding;
Check hold schedules;
Charges for automatic teller machine transactions;
Charges for personalized service (including teller service);
Costs of checks and per check debits;
Charges for cashing checks for non-customers;
Charges for money orders, cashiers checks, and wire transfers;
Availability of direct deposit and its impact upon fees.

AARP, in conjunction with other major consumer organizations, has developed a standardized disclosure form which should be used as a model for the type of disclosures required. A copy of this form is attached as Appendix A.

In addition, we wholeheartedly concur in HR 2282's requirements that such fee schedules: (1) be distributed to all account holders within 60 days of the effective date; (2) report any changes in such schedule to customers at least 30 days before the effective date of such change; (3) be given to potential customers before an account is opened; and (4) be given to the public upon request.

Uniform Terminology, Definitions and Methods of Calculating Interest.

It is our firm belief that all material terms and conditions must be uniformly defined since they do significantly affect the earnings of an account. To this end, the Federal Reserve Board should be required to provide uniform definitions and terminology as well as uniform methods for calculating interest.

Conclusion

AARP is pleased to comment upon H.R. 2282 and stands ready to work with the Committee towards mark-up of this important legislation.

Attachment A

Prototype Disclosure Form

Cover Sheet

Business Hours:

Telephone Numbers:

DEFINITION OF STANDARDIZED TERMS:

Business Day

Annual Rate of Simple Interest (ARSI)

Annual Percentage Yield (APY)

Composite APY

Introductory APY

Current APY

Index Rate

Balance Method (e.g., ADB, Low Balance)

Check Truncation

ACCOUNT TYPES: (e.g., Super Now, Now)

General Terms and Conditions

- CHECK HOLD PRACTICES (funds availability)
  Specify time periods according to drawer, geographical locations or any other classifications used.
- DEPOSIT CREDITING PRACTICES
- INTEREST CREDITING PRACTICES
- INSUFFICIENT FUNDS CHARGES
- RETURNED DEPOSIT CHARGES
- CHARGES For: Printing Checks
  Balance Inquiries
  Stop Payment Orders
  Inactive Accounts
  Closing Accounts
  Account Reconciliation or other personalized service
  Safe Deposit Boxes
  Certified Checks
  Money Orders
  Cashier's Checks
  Check Cashing (if non-depositor)
  – Requirements
  Other
- AVAILABILITY OF DIRECT DEPOSIT

Ask for separate disclosure form for Certificates of Deposit, IRA's and other time deposit accounts

MINIMUM INITIAL DEPOSIT

Other Requirements

ACCOUNT MAINTENANCE CHARGES: By Balance If Applicable
(Specify balance method)

PER CHECK CHARGE: Specify Conditions Under Which Assessed
(Specify balance method if applicable)

AUTOMATIC TELLER MACHINE CHARGES: Conditions Under Which Assessed

A. Our Machines
   Withdrawals
   Deposits
   Balance Inquiries

B. Network Machines
   Withdrawals
   Deposits
   Balance Inquiries

OTHER TRANSACTION CHARGES: Specify Conditions Under Which Assessed
(e.g., deposits, checks cashed, debits)

CHECK TRUNCATION
   Charge to Receive Checks
   Charge for Check Copies

INTEREST: By Balance If Applicable
Specify: (a) method of determining balance needed to earn interest and
(b) balance on which interest is paid.

A. $0 - 249
   1. AR/APY
   2. Period during which above rate is effective
   3. AR/APY after above period or method for determining rate
   4. If applicable, composite APY
   5. If applicable, current index rate
   6. If applicable, frequency of interest rate adjustments

B. $250 - 999, etc.
   1. Repeat above

C. Frequency of Compounding

OTHER RESTRICTIONS (e.g., limitations on number of checks)

SPECIFIED STATUS FOR FEE WAIVERS (e.g., age, charitable organizations)

TYPES OF ACCOUNTS

CHECKING			SAVINGS		
Basic	NOW	Regular	Passbook	Statement	Money Market

U.S. HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE

FULL DISCLOSURE OF BANKING CHARGES

Statement of
Ken McEldowney
Executive Director

SAN FRANCISCO CONSUMER ACTION

June 5, 1986

FULL DISCLOSURE OF BANKING CHARGES

Thank you, Mr. Chairman. I am Ken McEldowney, Executive Director of San Francisco Consumer Action. Consumer Action is a 15-year-old consumer advocacy organization. We are a non-profit membership organization, with 2,000 members throughout California. Our primary concerns are the consumer services of the telecommunications and financial services industries. We appreciate this opportunity to address the problem of disclosure practices in the financial services industry.

For more than a decade Consumer Action has specialized in the production of comparative pricing surveys. The philosophy behind consumer pricing surveys is remarkably simple. We believe that the optimum functioning of the marketplace depends upon fully informed consumers who carefully and knowledgeably weigh choices. But marketplaces have ways of veiling, even hiding, real costs: the goal of the shopping survey is to cut through marketing slogans and pretty images to present clear comparisons of costs and benefits.

Consumer Action conducts surveys for two reasons. First, to provide consumers with the detailed information that they need to choose those accounts which will best meet their needs at the lowest cost. But second, and equally important, to gather the data we need to spot problems within the industry. Today I want to focus on one of the major problems that we have uncovered, that of wholly inadequate disclosure of fee and interest information on the part of banks and savings and loans.

We annually release four major surveys of California banks and savings and loans. We have just published an eight-page tabloid listing detailed comparison pricing information on the savings instruments of more than 80 institutions. Later this year we will conduct a bank credit card fee and interest survey, followed by surveys of loans and checking and NOW accounts. Once a year we co-sponsor with the Consumer Federation of America a national banking survey which is conducted by CFA member groups throughout the country. Earlier this week the 1986 report was issued, containing information on 225 banks and savings and loans in 18 states and the District of Columbia.

The public response to our surveys has been overwhelming. Media coverage by newspapers, radio and television has been extensive throughout California. While the electronic media tend to focus on the broad conclusions that we have reached, the daily newspapers often go one step further and reprint some of the comparative price charts that we have developed. Consumers who want additional information send us self-addressed, stamped envelopes for copies of our survey results. Last year we received nearly 20,000 such requests.

I would like to take a moment to discuss the significance of this public response. As a grassroots consumer group we hear from many people who have problems in the marketplace. The two most common complaints we hear about the financial industry are that charges are too high and that it is very difficult to obtain facts about the costs and conditions of basic services. These are significant problems, because financial services have become an essential part of survival for everyone in today's society, including low income people.

When consumers seek information from financial institutions they face a series of hurdles set up by an industry oblivious to the need for complete pre-purchase disclosure. How are consumers supposed to learn about the fees and conditions of the accounts they are comparing? Full disclosure of such information never appears in radio or TV ads and only rarely in newspaper ads. Brochures often ignore the potential for charges or merely indicate that unspecified fees may be assessed under certain conditions. Banking personnel often have a difficult time presenting clear and accurate explanations of bank practices. When disclosures are made they are often tied to unfamiliar and undefined terms. To compound matters, a lack of uniform terminology makes comparing accounts at different institutions difficult.

Yet consumers' desire for such information, as measured by the response to pricing surveys by Consumer Action and other groups, is very strong. Today's consumer is increasingly aware of the need for full pre-purchase information, but when faced with the barriers to disclosure now found throughout this industry, most people throw up their hands and settle on the nearest institution.

Until the advent of deregulation, consumers at least had a fighting chance. For the most part, each institution offered a relatively small number of products and they were fairly comparable with those offered by other institutions. The products themselves were fairly simple.

However, with deregulation this has changed. Banks and savings and loans are attempting to distingish their products from those offered by the competition. The result has been a proliferation of new accounts, each unique and each loaded with features and conditions.

This development has not been accompanied by improvements in the delivery of pre-purchase information. Brochures and advertisements continue to be inadequate sources of information about the imposition of service fees and other key conditions. These failings might be forgivable if the industry had succeeded in improving the delivery of such facts at the branch level. Alas, it has been our experience that deregulation has compounded the difficulties experienced by branch personnel charged with explaining company policies.

Our preference as surveyors is to obtain information by calling branches of banks and savings and loans, posing as consumers seeking to obtain loans or open accounts. This method has the advantage of providing us with the same information that is being provided to potential customers.

But this method of gathering information has proven impossible with banking deregulation. Our experience has shown that, in many cases, branch personnel cannot even answer the most basic questions. For example, the question of what balance is required to avoid service charges on a regular savings account, or what that charge is, can be extremely difficult to have answered accurately. In one instance, which I hope was an extreme case, we called four branches of the same bank to find out whether it offered a SuperNOW. Employees at two branches informed us that it did not have such an account; employees at the other two assured us that it offered the account.

One fact that is often particularly difficult to obtain is the annual yield on regular savings accounts -- or any other kind of interest-bearing account. In many cases, branch personnel cannot give specific figures for the annual yield of their savings accounts. Such inquiries are even riskier when the subject is a figure likely to change with some frequency, such as money market accounts.

As the result of our experiences, we abandoned this method of gathering information. Instead, we now ask each institution to designate an executive who will provide us with offical information on prices and services. While this is a method that suits our purposes as surveyors, it does not begin to meet the needs of consumers. I seriously doubt whether any offical would be willing to field questions from all consumers who are comparative shopping.

For loans the consumer can look to the Annual Percentage Rate to provide a standardized figure that incorporates all the finance charges connected with a loan. Using the APR it is fairly easy for the consumer to compare loans offered by different institutions. Unfortunately, no such figure exists for accounts which pay interest, such as NOW accounts.

Consumer leaders have long pointed to hidden factors that can affect the actual return a consumer will receive from an interest-bearing deposit account. The best known factor is compounding, the effect of which is usually handled by disclosure of the annual percentage yield (APY). The effect of compounding is relatively minor compared to other factors that affect earnings. A 5.5% APR compounded quarterly will yield about 5.61%; monthly, 5.64%; daily, 5.65%. The difference between daily and quarterly compounding at 5.5% APR is about 40 cents per $1,000 per year.

Different methods of calculating balances on which interest is paid have a far greater impact on return. Most consumers assume that interest is paid on a day-of-deposit to day-of-withdrawal basis or on a daily balance basis. But interest may be paid on a minimum balance method, where interest is paid based on the lowest balance in the account on any one day of the month or quarter. The effect of this technique varies but can be far more signficant than frequency of compounding.

But consumers have to consider more than just interest income. Interest yield is gross, not net income. In recent years, disclosure of account fees has become especially important in evaluating consumer accounts. For loans, the fees charged are factored into the APR. But for deposit accounts such items as low balance penalties stand alone. A person expecting a return of 6% might never be warned that after fees have eaten into his account he will only receive 1% -- or even lose money.

With deregulation has come yet another complication, tiering. On January 1, 1985, the minimum balance required to earn high interest on money market accounts and time deposit accounts dropped from $2,500 to $1,000; on January 1 of this year the minimum balance required was completely dropped. On April 1, 1986 the ceiling on passbook savings account interest rates was lifted. The result of these changes is that banks and savings and loans are moving toward accounts in which both service fees and interest rates change at various balance levels. This has further hindered the ability of consumers to compare accounts.

1986 was touted as the year in which small savers would finally benefit from banking deregulation. But this has not been the case. Instead, small savers are being hit by increasing service charges and bewildered by new accounts that may pay them less than their old savings accounts.

Our recent survey of 82 California financial institutions reveals how the marketplace has changed. We found:

1. At many banks, consumers with less than $2,500 in savings could get higher interest in a regular savings account than in a money market account. Money market accounts were designed as higher interest savings instruments with limited check-writing privileges. However, many surveyed banks were paying 5.25% on MMAs with balances below $2,500 but 5.5% on regular savings accounts, as of April 7.

2. At about half of the surveyed banks, fees on MMAs with balances of $1,000 or less would exceed interest earned. Consumers who leave $1,000 untouched for a year

could have net earnings that range from a loss of $90 to a gain of $70 at banks and a loss of $39 or a gain of $79 at S&Ls. Most banks and S&Ls have charges on MMAs that go below specified balance levels. In some instances the fees vary with the balance maintained in the account. Banks have charges of up to $12 a month; S&Ls have charges of up to $8 a month.

3. As of April 7, only two of the surveyed institutions were offering the higher rates made possible by the lifting of the interest rate ceilings on regular savings acounts. One paid 7.5% but no interest at all on balances of under $1,000 while the other paid 7.5% but charged a fee of $2.50 for each month in which the balance fell below $500.

4. Most of the banks and S&Ls paid 5.5% on regular savings accounts while there was a much greater variation in money market account rates. The range at banks was 5.25% to 7%; the range at S&Ls was 5.25% to 7.5%. Many of the institutions had tiered rates with higher rates on larger balances.

With such variety in the marketplace consumers need accurate disclosure information to insure proper choice of accounts. It is clear from our surveying work and from consumers' experiences with inaccurate and incomplete information received from banking employees that voluntary disclosures have not and will not work. Voluntary disclosures cannot work because the information must be presented in a consistent format and with consistent terminology in order to allow consumers to make informed choices. Such consistency can only be mandated by regulation or legislation.

Disclosure of the fees and conditions associated with deposit accounts is essential to consumer comparative shopping and for the proper functioning of the market. Any legislation must require the following:

1. All fees must be revealed. In addition, other conditions, such as balances needed to earn interest and methods of calculating balances, must be disclosed.

2. Terminology must be standardized so that consumers will know that the use of a given term at one institution will mean the same as its use at another.

3. The format of the disclosures must be in a form that is easy to understand

and used by all banks and savings and loans. A simple, standardized chart would permit a consumer to readily compare different institutions. Special care should be taken to insure accurate disclosure of fees and interest rates on tiered savings accounts and MMAs, including net earnings figures for specified sample balances.

Adoption of these proposals would turn the financial marketplace into an arena where consumers would have a fair chance to select the products and services most appropriate for their needs.

-30-

NTEU
The National Treasury Employees Union

STATEMENT
OF
NATIONAL TREASURY EMPLOYEES UNION
TO THE
FINANCIAL INSTITUTIONS SUPERVISION, REGULATION AND INSURANCE SUBCOMMITTEE

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, D.C.

JUNE 5, 1986

Thank you Mr. Chairman and members of the Subcommittee for this opportunity to comment on the proposed Depository Institution Examination Improvement Act of 1986. I am Cathy Overly, Assistant Director of Legislation for the National Treasury Employees Union. NTEU is the exclusive representative for approximately 120,000 federal employees, located nationwide, the majority of whom are members of the the Civil Service system. A portion of the federal employee workforce NTEU represents includes virtually all non-supervisory FDIC employees located in the agency's Washington, D.C. headquarters, and all FDIC Field Examiners located in Chicago, New York City and Boston.

NTEU supports the provisions of this proposed bill that permit the FDIC to establish regional pay rates for federal examiners that are comparable to those enjoyed by people in similar positions in the private sector, and to permit the agency to use its discretion to establish other employee benefit programs. As you know, the President's own Pay Agent has determined that federal pay is almost 20% behind the private sector. As a result, NTEU is confident that comparability will mean an increase in pay and benefits. NTEU believes all federal employees should enjoy wage parity with the private sector, and has consistently attempted to convince Congress and this Administration that comparability is not only necessary to attract and retain qualified people, but required under law.

This union, however, has reservations about removing any federal employee from coverage under the Civil Service Retirement System. We oppose such a change because NTEU fears the integrity of the current system could be jeopardized if, through decreased participation, the base is significantly eroded. Furthermore, there is no assurance that an FDIC retirement system would be better than that currently available or soon to be available in the Supplemental Retirement System.

NTEU also supports the provisions in this proposed measure which will exempt FDIC from coverage of the Anti-Deficiency Act of 1974 and preclude the executive branch of the federal government from controlling the number of employees employed by the agency. It is important that the FDIC be permitted maximum flexibility in hiring and retention practices to meet the increasing demands on the agency's resources in this era of banking deregulation.

Finally, NTEU supports the provisions which exclude FDIC from coverage of the Balanced Budget and Emergency Deficit Control Act of 1985. The FDIC uses non-appropriated funds to meet virtually all of its administrative costs, which include personnel costs and employee benefits. Common sense dictates that if, as in this case, funds are not appropriated from the U.S. Treasury to pay for an activity, that activity should not be subject to mandatory cuts pursuant to a law that purports to reduce the deficit.

While more fully explaining NTEU's position on the above mentioned issues, I must emphasize that NTEU believes it is imperative that the current federal personnel systems, which affect almost all federal workers, be scrutinized, and substantially modified if necessary. With the exception of the proposed removal from the Civil Service Retirement System, this union supports the provisions which affect the FDIC personnel system because they are a manisfestation of what NTEU and others are attempting to achieve for all federal workers. That is, a fair and reliable compensation package.

As a means of accomplishing that objective NTEU has and continues to be a strong advocate of the bill introduced by the Honorable Mary Rose Oakar (H.R. 4738). That bill shall, if it becomes law, establish a variety of experiments throughout the federal government designed to generate and collect empirical data on different pay and/or personnel systems. The results of those experiments would, for the first time, provide Congress with a comprehensive picture of "what works" and "what does not work."

NTEU is willing to address the FDIC's personnel system problems separately only because of the FDIC's peculiar status as a non-appropriated fund agency. Presumably because the FDIC is funded primarily by user fees and investments, Congress has already seen fit to grant FDIC the power to establish a pay structure, insurance coverage (life and health) and other employee benefits separate from those permitted employees under the Civil Service System. As a result, the provisions under the proposed measure in this instance do not dramatically expand FDIC's authority under existing law.

NTEU opposes the retirement exclusion because the union fears the Civil Service Retirement System could be undermined if present participants are removed, and because there doesn't appear to be significant advantages to affected employees if they are removed. An erosion of the base of the federal employee retirement system is certainly a possibility if enough employees are removed. While the employees covered under the provision in this instance are relatively few in number, the removal of any employees sets a dangerous precedent. Furthermore, it is unclear that any retirement plan offered to FDIC employees would be better than that currently available or that which will be available through the Supplemental Retirement plan.

As stated above, NTEU also supports the provisions which would exempt FDIC from coverage of the Anti-Deficiency Act, and, thereby, the control OMB is attempting to exercise over FDIC's budget and hiring practices. The Anti-Deficiency Act empowers the executive branch of the federal government with the authority to oversee the expenditure of government funds by federal agencies. While this may be a valuable and necessary arrangement for those agencies which are spending money appropriated from the treasury, such action becomes an unnecessary and potentially harmful intrusion when an agency runs on non-appropriated funds.

The intrusion is unnecessary because the Anti-Deficiency Act's objective (to protect against spending which outstrips an agency's budget) is not applicable when the agency's budget consists of non-appropriated funds. OMB's job is to protect the U.S. Treasury from depletion. Obviously, if an agency' fund does not initially come from the treasury, expenditures by the agency will not affect the treasury.

In addition, the intrusion of OMB into the FDIC's budgeting process could be harmful to the agency and to the integrity of the banking regulatory system at large. By limiting FDIC's administrative expenditures, OMB controls and potentially limits FDIC's hiring practices. In this time of banking deregulation the FDIC should be building up its staff without artificial limits from OMB.

Finally, concerning the issue of exclusion from the Balanced Budget and Emergency Deficit Control Act, NTEU favors this provision because as a non-appropriated agency FDIC's expenditures have no actual impact on the deficit. As a result, it is irrational to mandate cuts to FDIC's budget pursuant to be a method that was allegedly designed to reduce the deficit.

In summary, NTEU supports the provisions addressing the FDIC's personnel system, except the removal of FDIC employees from the Civil Service Retirement System. The union also supports the proposed exclusions from the Anti-Deficiency Act and the Balanced Budget and Emergency Deficit Control Act.

TJS/prw/0307L

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May 27, 1986

Mr. Ed Yingling
Executive Director
American Bankers Association
1120 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Yingling:

On June 4 and June 5, 1986, the Subcommittee on Financial Institutions Supervision, Regulation, and Insurance will be conducting hearings on the most recent revision of the "Depository Institution Examination Improvement Act of 1986" introduced by Congressmen Carper and Lundine, and on H.R. 2282, the "Truth in Savings Act" introduced by Congressman Lehman. You or your designee are requested to appear before the Subcommittee on Thursday, June 5, 1986 at 10:00 a.m. in Room 2128 of the Rayburn House Office Building to testify on these measures.

In accordance with the Committee Rules, please deliver 175 copies of your prepared statement to Room B303 Rayburn House Office Building twenty-four hours in advance of your scheduled appearance. Your statement in its entirety will be included in the hearing record and, if delivered as requested, the statement will be made available to all Subcommittee Members in advance of the hearing. To provide all Subcommittee Members with sufficient time for questioning, the oral presentation of your prepared statement must be limited to five minutes.

Sincerely,

Fernand J. St Germain
Chairman

FJStG:dTv

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May 27, 1986

Mr. Alan Fox
Consumer Federation of America
1424 - 16th Street, N.W. Suite 604
Washington, D.C. 20036

Dear Mr. Fox:

On June 4 and June 5, 1986, the Subcommittee on Financial Institutions Supervision, Regulation, and Insurance will be conducting hearings on the most recent revision of the "Depository Institution Examination Improvement Act of 1986" introduced by Congressmen Carper and Lundine, and on H.R. 2282, the "Truth in Savings Act" introduced by Congressman Lehman. You are requested to appear before the Subcommittee on Thursday, June 5, 1986 at 10:00 a.m. in Room 2128 of the Rayburn House Office Building to testify on these measures.

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Sincerely,

Fernand J. St Germain
Chairman

FJStG:dTv

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May 27, 1986

Mr. Jack Guildroy
Member, National Legislative Council, New York
American Association of Retired Persons
6th Floor
1909 K Street, N.W.
Washington, D.C. 20049

Dear Mr. Guildroy:

On June 4 and June 5, 1986, the Subcommittee on Financial Institutions Supervision, Regulation, and Insurance will be conducting hearings on H.R. 2282, the "Truth in Savings Act" introduced by Congressman Lehman. You are requested to appear before the Subcommittee on Thursday, June 5, 1986 at 10:00 a.m. in Room 2128 of the Rayburn House Office Building to testify on this measure.

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Sincerely,

Fernand J. St Germain
Chairman

FJStG:dTv

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May 27, 1986

Mr. Ken McEldowney, Director
Consumer Action
693 Mission Street, #403
San Francisco, California 94105

Dear Mr. McEldowney:

On June 4 and June 5, 1986, the Subcommittee on Financial Institutions Supervision, Regulation, and Insurance will be conducting hearings on the most recent revision of the "Depository Institution Examination Improvement Act of 1986" introduced by Congressmen Carper and Lundine, and on H.R. 2282, the "Truth in Savings Act" introduced by Congressman Lehman. You are requested to appear before the Subcommittee on Thursday, June 5, 1986 at 10:00 a.m. in Room 2128 of the Rayburn House Office Building to testify on these measures.

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Sincerely,

Fernand St Germain

Fernand J. St Germain
Chairman

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May 27, 1986

Mr. Robert Tobias, President
National Treasury Employees Union
1730 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Tobias:

On June 4 and June 5, 1986, the Subcommittee on Financial Institutions Supervision, Regulation, and Insurance will be conducting hearings on the most recent revision of the "Depository Institution Examination Improvement Act of 1986" introduced by Congressmen Carper and Lundine, and on H.R. 2282, the "Truth in Savings Act" introduced by Congressman Lehman. You or your designee are requested to appear before the Subcommittee on Thursday, June 5, 1986 at 10:00 a.m. in Room 2128 of the Rayburn House Office Building to testify on these measures.

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Sincerely,

Fernand J. St Germain

Fernand J. St Germain
Chairman

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STEVE BARTLETT, TEXAS
TOBY ROTH, WISCONSIN

May 27, 1986

Mr. Kenneth T. Blaylock
National President
American Federation of Government Employees
80 F Street, N.W.
Washington, D.C. 20001

Attn: Mr. Terry Rogers

Dear Mr. Blaylock:

On June 4 and June 5, 1986, the Subcommittee on Financial Institutions Supervision, Regulation, and Insurance will be conducting hearings on the most recent revision of the "Depository Institution Examination Improvement Act of 1986" introduced by Congressmen Carper and Lundine, and on H.R. 2282, the "Truth in Savings Act" introduced by Congressman Lehman. You or your designee are requested to appear before the Subcommittee on Thursday, June 5, 1986 at 10:00 a.m. in Room 2128 of the Rayburn House Office Building to testify on these measures.

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Fernand J. St Germain
Chairman

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National Council of Savings Institutions

John H. Rousselot
President

June 5, 1986

The Honorable Fernand J. St Germain
Chairman
Committee on Banking, Finance and Urban Affairs
2129 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

The purpose of this letter is to submit the comments of the National Council of Savings Institutions on the "Depository Institutions Examination Improvement Act of 1986" and H.R. 2282, "The Truth in Savings Act."

The National Council of Savings Institutions strongly supports the May 22 draft of the "Depository Institutions Examination Improvement Act of 1986." We particularly support the provisions that allow FSLIC and FDIC to accept state examinations by qualifying supervisory agencies of insured institutions with MACRO or CAMEL ratings of 1 and 2.

On September 4, 1985, the National Council's Executive Committee approved a Task Force Report on Proposed Actions to Strengthen the FSLIC. This report states, in part:

"The changes that have taken place in the industry have stretched regulatory resources beyond the point where they can keep ahead of developments. The result has been that the resources of the Federal Home Loan Bank System have been reduced in their ability to monitor closely the institutions most in need of observation. It is likely that by concentrating limited resources on problem institutions . . . some of the cases that have in the past required expenditure of the resources of the insurance fund may be caught in time before reaching that state."

Thus, allowing FSLIC and FDIC to accept state examinations for institutions with MACRO or CAMEL ratings of 1 and 2 would allow the FHLBB to focus its resources more effectively on those institutions that are currently having difficulties or showing signs of developing difficulties.

With regard to H.R. 2282, the "Truth in Savings Act," the National Council of Savings Institutions supports the principle that consumers should have access to complete and accurate information on all savings instruments. Some of the provisions of H.R. 2282 relating to advertisements, announcements and solicitations have already been implemented under current regulations. In addition, the Federal Reserve Board issued proposed regulations on this matter in January and it is our understanding that an interagency task force has recently started to review the advertising of savings instruments.

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The Honorable Fernand J. St Germain
June 5, 1986

The Council believes that there are several problems with H.R. 2282 as currently drafted. Section 5 of H.R. 2282 directs the Federal Reserve Board to prescribe regulations requiring that all annual percentage yields be based on a 365-day period, and mandating the method of calculation of annual rates of simple interest and annual percentage yields. This provision could prove to be anti-competitive and detrimental to consumers in the long run. Individual financial institutions should retain the flexibility they now enjoy to attract necessary deposits.

We appreciate the opportunity to submit the views of the National Council of Savings Institutions on both of these measures, and ask that this letter become part of the hearing record.

Kind regards,

John

John H. Rousselot

NAFCU
National Association of Federal Credit Unions
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June 11, 1986

The Honorable Fernand J. St Germain
Chairman
Committee on Banking, Finance and Urban Affairs
2129 Rayburn House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The National Association of Federal Credit Unions (NAFCU) appreciates your invitation to comment on two pieces of legislation, The Depository Institution Examination Improvement Act of 1986, (H.R. 3567) and the Truth in Savings Act (H.R. 2282). NAFCU commends you for calling hearings to facilitate public discourse on these two significant legislative proposals. We would appreciate our comments being included in the hearing record of June 4 and 5, 1986.

NAFCU strongly supports the initiative encompassed in the Depository Institution Examination Improvement Act. This bill would clearly establish the independence of the federal financial regulatory agencies, setting their operations apart from the constraints of the Gramm-Rudman-Hollings Act, the Anti-deficiency Act, and the oversight of the Office of Personnel Management (OPM) and the Office of Management & Budget (OMB). In addition, this legislation would establish uniform procedures for reviewing the state examination of federally insured depository institutions.

NAFCU views the Depository Institution Examination Improvement Act as a long step in the direction of establishing an effective framework in which to monitor the safety and soundness of all federally chartered and federally insured credit unions. In this regard, NAFCU applauds the bill's cosponsors, Representatives Carper and Lundine, for their continuing efforts to improve the federal financial regulatory structure. We urge that the House Banking Committee give this bill expeditious consideration.

To assist the Committee during its deliberations on this legislation, NAFCU would like to raise several points.

As mentioned earlier, we believe that it is highly desirable that the National Credit Union Administration be freed of the budgetary and personnel constraints that are imposed upon federal agencies whose operations are funded through appropriations from the United States Treasury. The operations of the National Credit Union Administration (NCUA), the National Credit Union Share Insurance Fund (NCUSIF) and the Central Liquidity Facility (CLF) are funded entirely from assessments levied upon credit unions. They do not derive any funding from the general revenues of the federal government. Moreover, savings produced from NCUA budget reductions cannot by law be applied to reducing the federal deficit. For these reasons, it is entirely inconsistent that federal budgetary and personnel strictures be applied to NCUA or to any of the federal financial regulatory agencies. We urge, therefore, that Congress act to clarify the independent status of the federal financial regulatory agencies.

Last week, Senator Roger Jepsen, Chairman of the National Credit Union Administration Board, provided this Committee with extensive testimony on the deleterious effects which the limits on personnel and budget have had upon the operations of NCUA. There is no need for me to repeat in this letter the very persuasive evidence presented by Senator Jepsen demonstrating the difficulties encountered by the agency in maintaining a stable and well trained examination force. Yet, one aspect of the chairman's testimony bears repeating. Despite the sophistication of those dedicated individuals who voluntarily serve on credit union boards, and in many cases operate the credit union, as Senator Jepsen stated: "The fact that the board of directors of a credit union consists of volunteers makes it important that NCUA maintain a fully staffed and well trained corps of examiners to assist the management in understanding and adjusting to our rapidly changing financial environment." We believe that the Carper-Lundine legislation will allow NCUA to meet this obligation, by giving the agency the latitude it needs to hire and retain highly qualified individuals.

The Depository Institution Examination Improvement Act would clearly establish that, for federal budget and personnel purposes, NCUA and the other federal financial regulatory agencies would possess independent status. This is not to say, however, that these agencies would be removed from federal supervisory jurisdiction entirely. NCUA would remain subject to audits conducted by the Comptroller General of the United States and would continue to be required to make annual reports to Congress and the President.

While clearly establishing the independent status of the federal financial regulatory agencies, the Depository Institution Examination Improvement Act would enhance the role of the Financial Institutions Examination Council (redesignated under the legislation as the Depository Institutions Examination Council). In one aspect of its operations, the Council would act in an advisory capacity, conducting studies and providing the agencies with information regarding competitive salary and benefit levels for employees. In addition to these studies, the Council would be required to make recommendations on appropriate compensation levels for agency personnel on temporary assignment. Although the final determinations regarding salary, benefits and travel reimbursements would be left to the individual agencies, recommendations made by the Council could provide valuable information which could enhance the ability of the regulatory agencies to retain expert personnel.

The Depository Institutions Examination Council would also be instructed to conduct a study into the consolidation of examiner training. The bill itself declares that it would be the policy of Congress that all programs for training federal examiners be consolidated in one school conducted by the Council. The responsibility for implementing that congressional mandate would be assigned to the Council. The Council would additionally be instructed to investigate the feasibility of establishing a graduate degree program in financial management analysis for officers and employees of the federal depository institution regulatory agencies.

NAFCU is concerned about the ramifications of the congressional policy regarding the consolidation of examiner training articulated in this bill. By consolidating the training of federal examiners the authors seek to achieve uniform high-quality education in an efficient and cost-saving manner. These are certainly laudable goals; however, in light of the unique characteristics which distinguish the different types of financial institutions, NAFCU questions whether a consolidated training program is truly the best method of preparing examiners for the situations they will encounter during their careers. If the training of examiners is to be consolidated, NAFCU would urge that great care be taken to insure that the curriculum enables examiners to specialize in courses which will orient them to the particular characteristics of the financial institutions they will be examining.

On the other hand, NAFCU strongly endorses provisions in the Depository Institution Examination Improvement Act of 1986 which would establish minimum requirements for the state examination of federally insured credit unions and other financial institutions. NCUA examines the operating conditions of federally chartered credit unions annually. Due to personnel limitations, however, the agency only examines state chartered federally insured credit unions identified as problem institutions, but is not able to examine all state chartered federally insured credit unions on a regular basis.

Over the last 18 months, state chartered credit unions have sought coverage from the NCUSIF in large numbers. In some states the legislature is requiring credit unions to obtain federal insurance. NCUA is required to consider the financial condition of state chartered credit unions as they apply for federal insurance (12 USC §1781), and the agency is presently conducting examinations of all state chartered credit unions who submit applications to the NCUSIF. Once these credit unions obtain federal insurance, however, the agency is only able to examine them on a select basis, depending upon the financial condition of the institution as reported by state regulators.

In 1984, legislation was passed (P.L. 98-369) requiring all federally insured credit unions to post 1% of their deposits with the NCUSIF as a means of bringing additional capital into the fund. Each January, credit unions are required to adjust these deposits to maintain 1% of their insured shares with the NCUSIF. As a result of the 1984 law, the NCUSIF is the most strongly capitalized of the three federal deposit insurance funds. This achievement reflects a significant investment on the part of all federally insured credit unions, yet the NCUA is not able to monitor, on a first hand basis, the safety and soundness of all the state chartered credit unions it insures.

The Federal Credit Union Act requires the NCUA Board to utilize state examination reports "to the maximum extent feasible" (12 USC §1781). Moreover, due to the number of credit unions insured by the NCUSIF, the agency has little choice but to rely upon these examinations. Generally, we believe the quality of examinations conducted by state credit union regulators is quite good. However, these examinations do not consistently follow the procedures adhered to by federal regulators. NAFCU strongly supports the concept of dual chartering and the authority of states to delineate the powers which will be accorded to the various types of financial institutions they charter. For the protection and stability of the federal share insurance fund, however, NAFCU firmly believes that the examination of all federally insured credit unions should be conducted according to the same criteria. For this reason, NAFCU wholeheartedly endorses the provisions contained in Section 6 of the Depository Institution Examination Improvement Act.

To further enhance the uniformity of examination procedures for federally insured depository institutions, we recommend that two additional criteria for examinations be added to Section 6(b)(2) of the bill. In addition to the requirements set forth in the bill, the Council should establish standards relating to procedures for classifying investments and supervising investment practices of state chartered institutions. The Council should also establish minimum criteria to evaluate the reserve requirements for state chartered institutions and procedures for insuring the maintenance of those reserves. These additional criteria are particularly important if the legislation is to require federal regulatory agencies to accept the examination reports of state regulators.

A final concern regarding the Depository Institution Examination Improvement Act is that in Section 6(i), regarding the acceptance of state examinations, a financially sound insured credit union is defined as having a CAMEL composite rating of 1 or 2. Federal credit unions are evaluated according to an EWS rating system which is similar in function to the CAMEL system. NAFCU suggests that the definition be amended to reflect the EWS rating standard currently employed by Federal credit union examiners and readily understood by credit union officials.

The Truth in Savings Act (H.R. 2282), introduced by Representative Lehman, is intended to provide for the uniform disclosure of rates of interest paid on savings accounts. Representative Lehman seeks to provide consumers with greater information regarding rates of interest paid on savings accounts so that they can make more informed choices regarding the many savings options available to them. NAFCU commends Representative Lehman for his efforts to assist consumers in making meaningful comparisons of interest rates paid by various depository institutions. We do, however, have some reservations with respect to the manner in which this legislation would apply to federal credit unions.

The bill is directed to the disclosure of interest rates. Earnings on federal credit union accounts, however, are not reflected as interest but as dividends, due to the ownership interest which a member's shares represent. Although Section 5 of H.R. 2282 instructs the Federal Reserve Board to prescribe uniform terminology which shall be used by depository institutions to describe interest rates and other terms which significantly affect the earnings on accounts, we do not believe that the earnings on credit union accounts can be accurately included in a lexicon which also defines interest earnings.

By their nature, dividends are paid after earnings, losses and reserves have been accounted for. Interest, on the other hand, is a contractually agreed upon rate which a financial institution will pay a depositor for the use of that depositor's funds. To require federal credit unions to adopt terminology which is oriented to interest rates and force them to project earnings in a manner similar to institutions which pay interest, ignores the very characteristics that distinguish a federal credit union share account from the accounts offered by other depository institutions. Not only would this practice inappropriately ignore the distinctions between dividends and interest but also, it would work to mislead the consumer by attempting to treat accounts on which earnings are a direct reflection of the financial performance of an institution as if those accounts paid a contractually established rate of return. For these reasons, NAFCU does not believe that the requirements of the Truth in Savings Act can be appropriately applied to federal credit unions.

The conditions affecting federal credit union dividends will fluctuate between the periods during which dividends are declared. Since it is not possible for federal credit unions to guarantee dividends in advance, it is also not possible to apply a uniform rate of calculation to the dividend rate. Most credit unions currently make information regarding earnings on share accounts available to members on a periodic basis and could, with little difficulty, make information on the past performance of share earnings available to new shareholders.

To our knowledge, federal credit union members have little difficulty obtaining information regarding earnings paid on share accounts. As member owned cooperatives credit unions are dedicated to serving the needs of their members. In light of the technical difficulties which would be encountered in applying the interest rate provisions of this legislation to federal credit unions, NAFCU would suggest that those provisions not be made applicable to federal credit unions. Unlike financial institutions which compete for deposits from the general public, membership restrictions prohibit federal credit unions from serving individuals other than members. Federal credit unions are not able to solicit deposits from the general public. Federal credit unions serve a generally limited group of individuals who have a more direct relationship with their credit union than any other financial institution. For this reason, the necessity for applying Truth In Savings type legislation to federal credit unions would be far less imperative than in the case where individuals have an anonymous relationship with their financial institution. In his testimony before this committee, Senator Jepsen indicated that NCUA has received almost no complaints from credit union members regarding the return on their deposits. This fact, in addition to the character of credit unions, prompts NAFCU to suggest that it is not necessary to include federal credit unions in the provision of the Truth in Savings Act at this time.

Mr. Chairman, NAFCU appreciates this opportunity to comment on the various aspects of the Depository Institution Examination Improvement Act and the Truth In Savings Act. If you, or any other member of the Committee, require any additional information regarding the statements contained in this letter, please do not hesitate to contact William J. Donovan, Deputy Executive Vice President for Government Affairs, or Thomas J. Delaney, Associate Director of Congressional Affairs.

Sincerely,

Robert A. Hess
President

RAH:ew

Credit Union National Association, Inc.
1730 Rhode Island Ave. N.W. Washington D.C. 20036 202-828-4500

Joseph Perkowski
Chairman

July 8, 1986

RECEIVED
JUL 9 1986
Subcommittee on Financial Institutions

Honorable Fernand J. St Germain
Chairman
Committee on Banking, Finance and
Urban Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter inviting the Credit Union National Association, Inc. (CUNA) to provide comments on H.R. 4971, the "Depository Institution Examination Improvement Act of 1986" and H.R. 2282, the "Truth in Savings Act." I am most pleased to submit this letter containing our views for inclusion in the hearing record.

For the record, CUNA* represents virtually all of the 17,800 credit unions in this country and their 52.5 million members. This is done through our network of credit union leagues located in every state, the District of Columbia, and Puerto Rico. Present credit union assets are approximately $140 billion.

Depository Institutions Examination Improvement Act

It is clear that, if they remain in effect, the sequestration provisions of the Gramm-Rudman-Hollings Act constitute an unwarranted and disruptive threat to the operations of the independent financial regulatory agencies, including the National Credit Union Administration (NCUA). The sequestration provisions would be triggered each year in which Congress fails to meet the deficit reducing targets of Gramm-Rudman-Hollings for that year. When triggered, these provisions call for across-the-board spending cuts at NCUA with the exception of the Share Insurance Fund activities. In FY 86, these cuts amounted to 4.3% and in FY 87, they would be about 15%. The bulk of these cuts would have to occur within the NCUA examiner ranks. Because NCUA does not receive its operational funding from taxpayer monies but rather by assessments on and deposits from credit unions, the sequestration cuts would not contribute in any fashion towards reducing the

*CUNA Members
9,400 Federal Credit Unions
7,000 State Credit Unions

deficit. Therefore, we are saddled with a process which invokes an automatic and continuous reduction in the examination capabilities of NCUA while contributing nothing to the budget-balancing efforts. As the payors of the funds involved and the recipients of the supervision thus provided, we object to this process as totally counterproductive.

The Carper-Lundine bill, H.R. 4917, would address this problem by removing NCUA from the automatic reduction features of Gramm-Rudman-Hollings and CUNA fully concurs with this feature of the bill. Further, H.R. 4917 would take additional steps to guarantee the independence of NCUA. CUNA continues to endorse its position that credit unions should be regulated by a separate and independent credit union regulator.

Expanded Role for the Examination Council

The proposed legislation would also expand the role of the Examination Council with respect to examiner training and the development of standards regarding the adequacy of state examinations.

With respect to the provisions regarding standards for state examinations, CUNA agrees with the position taken by NCUA that such provisions are unnecessary. The NCUA has always worked closely with state credit union supervisors in addressing common problems. At present, NCUA and the National Association of State Credit Union Supervisors are on the verge of accepting model examination forms and worksheets for both Federal and state examinations. CUNA supports this approach to credit union problem-solving and does not endorse the inclusion of credit unions in Sec. 6 of the bill.

Concerning the training and education provisions, CUNA does not believe the interests of the credit union movement would be best served nor would credit union movement funds be best expended in the consolidated examiner and education provisions set forth in Section 4 and 5 of this bill.

First, we are not persuaded that a dramatic expansion of the Examination Council's role to include an examiner's school and a graduate degree program will result in cost savings through an elimination of all or a portion of the present "duplication" of training. On the contrary, there is the distinct possibility of creating duplication as agencies attempt to satisfy the new demands of a congressional policy to consolidate training while contending with the practical necessity of continuing the long-standing training programs tailored to their particular type of financial institution. In the case of credit unions, which for example pay dividends instead of interest, are non-profit, have share drafts instead of checks, have no capital stock, have an entirely different reserve structure, and where over 8,000 institutions are under $1 million in assets, there are severe practical constraints on the amount of consolidated training which would be realistic or even desirable. Yet credit union funds are certain to be prorated for any such examiner school and/or graduate school; possibly even in the case where NCUA (and the credit union movement) did not desire to participate. The relative health of credit unions is quite good under the present system. NCUA reports that the number of problem credit unions (codes 4 + 5) has dropped for the 5th year in a row. We continue to believe that our examiners should be credit union specialists not depository institution specialists.

Second, we believe any increased role for the Council will result in a corresponding reduction in the independence of the credit union regulator and we do not support such a change. Further, credit union funds allocated to the Council will simply become part of the Council's overall budget and will be markedly more difficult for credit unions to monitor. Over the years, credit unions have kept close track of the monies spent for federal supervision and insurance. Because of this and the excellent record of our agency (bureau) over the years, we were quite comfortable in rallying behind the recapitalization of the insurance fund last year. We now have over $1 billion in a refundable deposit with NCUA and our monitoring of the agency's budgetary activities has naturally increased. We, in the credit union movement, continue to place a great emphasis on the ability to solve our own problems and we simply believe that additional credit union funds for the Examination Council will not contribute to the overall well-being of credit unions.

Third, and perhaps most importantly, CUNA is very concerned with the effects which consolidation and standardization within the financial marketplace and within the legislative and regulatory arenas have had on the unique identity of a credit union. Our recent struggle to maintain the credit union tax exemption has made clear to us three important points: consumers prefer credit unions the way they are; credit unions are not the same as banks; and credit unions do not want to become like banks. However in the modern financial environment, there are many forces operating against the preservation of the basic credit union. Some are quite direct, others are more subtle. Taxation was a very direct threat and one that would have irreparably altered the fundamental nature of a credit union by causing management decisions to be based on tax avoidance strategies instead of member services. Those promoting the "level playing field" argument also end up attacking, deliberately or inadvertently, the credit union identity. By focusing on certain similarities in the financial services offered rather than on the manner in which they are delivered (cooperative, non-profit, member-owned), a subtle but continuous pressure is created to treat depository institutions alike: alike in taxation, alike in legislation, alike in accounting, alike in regulation etc.

Preserving the Basic Credit Union

Mr. Chairman, one of our most constant challenges is to avoid being lumped into various proposals, ideas, or concepts seeking to achieve either standardization, centralization, equal treatment, a level playing field, or in this case, consolidation. Even the otherwise worthwhile goal of comparison--shopping can lead to a degree of standardization that would not accommodate the unique services of credit unions.

I believe that one of the great qualities of the credit union movmement is its lack of emphasis on standardization. Some credit unions are only open one day a week, some are open 24 hours a day, 365 days a year. One third of all credit unions have no full time employees. In their formative days, many are helped by other credit unions or even their examiner. Some types of accounts are found in but a few credit unions, others are quite widespread. During the tax fight, I learned of one credit union account called the "Don't let me touch it account". It was explained as a psychological account for those who were never able to systematically save. I believe there is a distinct possibility that this account might not meet a set of universal examination or disclosure requirements were they imposed. And, therefore, such an account might be abolished. Yet this account in that particular credit union caused several hundred participants to accumulate over $4 million. There are many such creative ideas that are developed every day. And it is this creative problem solving process operating at the level of the individual credit union which has given America a full blown system of pro-consumer financial institutions.

The MacDonaldization of the credit union movement would be to extinguish the very essence of the credit union difference - the creative ability of a manager and board of directors to tailor their credit union to meet the needs expressed by their particular membership. NCUA routinely testifies to the absolutely minimal level of complaints they receive from credit union members. Since complaints are probably the bottom line measurement of how a system is working and since they constitute the basis for many legislative changes, we are mindful to never allow the fundamental relationship with our members to be disrupted by a search for standardization, or for that matter, even for efficiency, prestige, or growth.

We found in the process of the tax fight, Mr. Chairman, that the movement was clearly at a turning point. It had arrived at the road taken by the S&L industry in the 50's and we were forced to make a collective decision. Our choices had narrowed to two: (1) were we to seek expanded powers and aggressively enter a profit motivated approach to competition? or (2) were we to continue our non-profit speciality of consumer oriented services realizing that our mission of bringing basic credit union services to all who need it was far from accomplished?

We decided to try and stay the course. It will be a difficult thing to do. There are many pressures both within and from outside the movement which suggest that homogenization of financial services is inevitable. Our position is that such an unattractive outcome should be avoided at all costs. We provided the Congress with the details of our record along with our decision. I believe the tax exempt status was renewed as a recognition of the choice we made, of the fact we operate without turning to the government for solutions to our problems, and as a means of helping us to maintain our consumer record.

CUNA Policy Change

Mr. Chairman, the reason I have taken so much time providing you and the Committee members with this appraisal of our overall situation is because CUNA has recently decided it must alter the approach traditionally taken in providing support for certain legislative proposals. In particular, we would be reluctant to provide support for those proposals which do not address specific credit union problems but, nevertheless, do require credit unions to change existing procedures. Some proposals, while otherwise meritorious, impose change not directed at credit unions but with a view to conformity on a larger scale. We cannot automatically support legislation mandating how information is presented or how certain accounts must be structured in all financial institutions, across the board. We ask your understanding in this matter as we take steps to prevent further erosion of our system.

In the past, we have consistently been on the record as supporting pro-consumer legislation. We would prefer to continue doing so. Also, we have repeatedly pointed out the anomalies caused by various proposals with respect to credit union operations. We have noted the lack of evidence of credit union abuse in the areas under consideration. Finally, we have consistently requested modifications so that existing credit union practices do not have to be disrupted.

Unfortunately, the preservation of the basic credit union has generally been compromised in the interests of standardization, comparison-shopping, or equal treatment. We believe it is now incumbent on us to more aggressively make the case that this trade-off is unwise, is extremely counterproductive, and probably never should have been condoned in the first place. For example, I know that many credit unions have had second thoughts about the Truth-in-Lending Act. As you know, we were strongly out in front in the fight to secure this legislation so that consumers would have more information about their loan accounts. But the compliance costs have been legion as it turned into a regulatory morass where even the printers type size for disclosure was dictated. It has been hard for credit unions to see where their members have benefitted from all these costs; especially since there was not a credit union problem in the first place.

Sometimes it is difficult to draft legislation to take care of the credit union differences. A case in point is the Expedited Funds Availability Act. Accompanying our support for this measure was a request to address a particular operational problem. The legislative solution was not developed and the House passed bill would cause many credit unions to abandon a longstanding and very pro-consumer practice. Further, it would impose a costly restructuring of accounts on these credit unions and would take them one step closer to conducting business in exactly the same fashion as all other institutions. Let me explain this particular account in more detail.

In By The 10th, Earn From The 1st

Many years ago, credit unions learned an important principle in teaching savings habits to their members. It went something like this - A savings program must be directed at payday itself in order to get results. They knew that, especially in the case of the younger members, if a person waited until the end of the month to see if anything was left over and then put that in savings...there was never anything left over!

Therefore, an account was structured around payday, normally the 1st of the month. The ground rules of this account were...put your money in by the 10th and earn from the 1st! Put it in after the 10th, earn nothing (until the following month). This practice was and continues to be extremely successful in generating a steady pattern of savings and was widely adopted by credit unions. In fact many set up their entire accounting system on "in by the 10th earn from the 1st." To this day, there are thousands of credit unions with this system.

The Expedited Funds bill will stop this practice by requiring that every check, including those deposited after the 10th, begin earning from day of deposit; even though a cash deposit would not have to begin earning on that date. The solution we are seeking is to permit credit unions to give the same treatment to checks as they do to cash.

Truth-in-Savings

As you may have surmised, most of these comments have been a prelude to our position on H.R. 2282, the "Truth-in-Savings Act."

CUNA has a long-standing policy of support for the concept of Truth-in-Savings disclosure. This practice is routine within credit unions as they are member-owned and member-oriented institutions. In order to be truly effective at curbing abuse, however, any legislation should be extended to cover all providers of financial services and not just financial institutions. CUNA requests that such a change be made to the proposal. Our overall policy, however, includes a guideline that the cost of disclosure not outweigh potential consumer benefits.

In our judgement, the costs to credit unions of H.R. 2282 far outweigh any benefits to credit union members. Additionally, the operational difficulties of conforming are quite severe. The primary difficulty centers on the fact that credit unions pay dividends and they cannot be guaranteed ahead of time. The 'interest' paid by other financial institutions, on the other hand, is contractually guaranteed to the depositor. These and other concerns were detailed by CUNA during the drafting stages of this bill last year. The problems have not been addressed in the legislation. For the record, I am enclosing a letter of April 16, 1985, to the sponsor of Truth-in-Savings, Mr. Lehman. I would ask that this letter be part of the Committee's record as it contains more detailed information on certain credit union problems.

CUNA Survey

Mr. Chairman, in its most recent deliberations on this issue, the CUNA leadership directed that an immediate survey of credit union savings disclosures be conducted and such survey is presently underway. Further, it directed that the results of this survey be provided to the Consumer Federation of America for an evaluation of credit union performance in this area. Naturally, all survey information and results will also be provided to the Committee. We are simply seeking confirmation of our contention that credit unions do presently meet the purposes of this legislation. As mentioned earlier, NCUA has already testified as to the minimal level of complaints which they have received.

Based on the anticipated outcome of this survey and its evaluation, we request that the committment to preserve the basic credit union be given a top legislative priority. We specifically ask that, for the reasons set forth in this letter, credit unions be exempted from the coverage of this particular proposal.

I thank you for the opportunity to comment and sincerely hope our comments are useful to the deliberations of the Committee.

Most sincerely,

Joseph L Perkowski

Joseph L. Perkowski
Chairman

Enclosure

STATEMENT

of

INDEPENDENT BANKERS ASSOCIATION OF AMERICA

on

Depository Institution Examination Improvement Act of 1986

and

Truth in Savings Act

Before the

Committee on Banking, Finance and Urban Affairs
Financial Institutions Subcommittee
Honorable Fernand J. St Germain, Chairman

June 4, 1986

The Independent Bankers Association of America appreciates this opportunity to present our views on the "Depository Institution Examination Improvement Act of 1986" and the "Truth in Savings Act" (H.R. 2282). The IBAA is a national trade association representing some 7,400 community banks located in all fifty states.

These bills, though not closely related, address longstanding concerns. The question we wish to raise in this statement is whether their specific provisions are responsive to these concerns, and whether they are proportionate. We believe the "Depository Institution Examination Improvement Act," introduced by Congressmen Carper and Lundine meets these two tests; its provisions directly address key problems in the bank examination process effectively and appropriately.

In contrast, the "Truth in Savings Act" goes far beyond concerns about whether depository institutions' advertising of interest rates is clear and accurate, and includes provisions relating to all types of fees. On the other hand, the bill does not address interest rate advertising by other institutions that accept the public's funds and pay interest on them, such as money market mutual funds and insurance companies. Thus, the bill's provisions are out of proportion to its central focus--misleading advertising--and yet does not fully address that issue.

These are our detailed comments on these bills:

CARPER/LUNDINE BILL

The federal depository institutions examination system needs help. In the past, our members actually looked forward to their examinations. It gave them an opportunity to have their bank's performance rated by competent, experienced experts who who could objectively analyze a bank's performance and could provide appropriate suggestions and recommendations for improvement. This is no longer the case. Now, as soon as an examiner gains the experience necessary to provide that kind of help, he or she is often recruited by the private sector, which can offer higher pay and better working conditions.

Until last year, the bank regulatory agencies were generally independent of the federal budget process. Their receipts and expenses were included in the unified federal budget, but neither the White House nor the Congress attempted to limit their spending. After all, the money they spend is contributed by the banks themselves. And, no one believed that spending for bank examinations was something that could be safely reduced. In fact, the regulators have often spoken through the years about increasing the intensity of their efforts, as the Federal Reserve is presently trying to do.

Now, both the White House' Office of Management and Budget and the Congress are seeking to cut back on personnel in the banking agencies the same way they limited the nation's thrift agency, the Federal Home Loan Bank Board.

We deplore these trends, and believe that the Carper/Lundine bill provides an excellent response.

This bill, most recently revised by its sponsors on May 22, 1986, would make the pay of federal examiners competitive with the private sector, taking into account regional pay differences; ensure that the federal depository institutions agencies are free from political and budgetary interference; improve examiner training; and provide incentives to improve state examinations.

Budgetary Control:

Some may suggest that removing the agencies from budgetary control, particularly the Gramm-Rudman requirements, will set a bad precedent. Our response is that imposing those restraints is the bad precedent. The Bank Board, which has operated under outside budgetary control for years, recently had to transfer its entire examination force to the Federal Home Loan Banks so that its federally-insured thrifts could receive adequate examinations. And it recently chartered a private corporation to liquidate the assets of failed thrifts because it was not permitted to hire an adequate staff to do the job in-house.

The FHLBB experience graphically illustrates the problem posed by OMB and budgetary interference. Thousands may be saved in the short run, while millions are lost later on. Even more troubling, poor or infrequent examinations may permit unsound banking practices to continue, which can lead to failures. This not only weakens the insuring funds, it can also result in a loss of banking services in some locations. This is exactly what the insurance and examination system was established to prevent.

This system is carefully designed to be completely financed by the depository institutions themselves. The initial capitalizations of the insuring funds have long since been repaid to the Treasury. The only assurance of taxpayer backing is based on the political judgement that, in an emergency, Congress would vote funds necessary to honor the $100,000 insurance guarantee. However, even now, when the FSLIC fund is in dire straits, the Administration and Congress appear ready, as they should be, to draw on the industry's own resources in the Home Loan Banks rather than tap the taxpayers.

Examination Improvement:

The other features of the bill, relating to examiner pay and training and the use of state examinations, depend on the ability of the federal and state agencies to spend the amounts necessary to do the job.

The job of a federal bank, thrift or credit union examiner is particularly demanding. The work is complex and technical, and examiners spend much of their time on the road, away from home. If this position is to be anything more than a brief stepping stone to a more desirable position in the private sector, examiners must be adequately compensated. And that compensation must be sensitive to regional variations. The Carper/Lundine bill solves this problem by exempting examiners from federal civil service limitations and requires the agencies to take regional variations into account when setting pay.

The bill also takes an important step in seeking to unify examiner training. This may well help to make examinations somewhat more consistent, without sacrificing the value of independent banking regulation.

In this regard, we applaud the bill's recognition of the important role state examinations can play. If the dual banking system is to have real meaning, it is important for state examiners to have a strong role in the process. At the same time, increased use of state examinations for well-run institutions will permit federal examiners to concentrate on institutions that are having difficulties.

TRUTH IN SAVINGS

The impetus for truth in savings legislation in the last Congress was concern that advertising for savings deposits, particularly certificates of deposit, was misleading consumers. Some depository institutions were advertising sky-high "teaser" rates--up to 25%--which would be paid for only a short part of an account's term. Far lower rates would be paid for the balance of the term. However, these rates were buried in the fine print.

The truth in savings bill considered by this subcommittee in the last Congress, H.R. 5232, addressed this issue by requiring depository institutions to clearly state in their advertising the annual yield of their savings accounts. We support the concept of truth in interest rate advertising.

Unfortunately, the current bill, H.R. 2282, goes far beyond its predecessor. Advertising must indicate "the frequency with which interest is payable," "all minimum balance requirements," and add that "other terms of this account could substantially affect the actual yield you receive from this account." With these statements, the advertising may begin to read more like a Congressional report than advertising copy.

Advertising alerts consumers that the advertiser has a product that they may want. The consumer then seeks out the product and asks the questions that no advertising copy can fully answer. Advertising copy should not mislead, but it cannot fully inform. That is up to direct contact between the consumer and the business, and close examination of the product. The normal law of contracts should also apply in the bank/customer relationship; the bank must disclose terms and conditions when a customer opens an account. No one buys a car based on advertising alone; no one should invest money in an institution without being satisfied they know all they feel they must. A newspaper ad cannot contain enough information for that kind of decision.

The new Truth in Savings bill, H.R. 5232, goes beyond the earlier bill in another way. It requires depository institutions to maintain, and provide on request, a written schedule of all fees, charges, and terms and conditions of their accounts. A full page of the bill outlines exactly what must be covered by this written schedule. Even this does not exhaust the provisions of the bill. It goes on to direct the Federal Reserve to draft regulations to carry out the bill.

These regulatory provisions contain the seeds of complexity rivaling the Truth in Lending Act, and its accompanying pages and pages of regulation. Of course, no depository institution should object to disclosing its fees. However, the regulations will likely require that fee disclosures take on a certain form, and woe to the institution that runs afoul of these technical requirements.

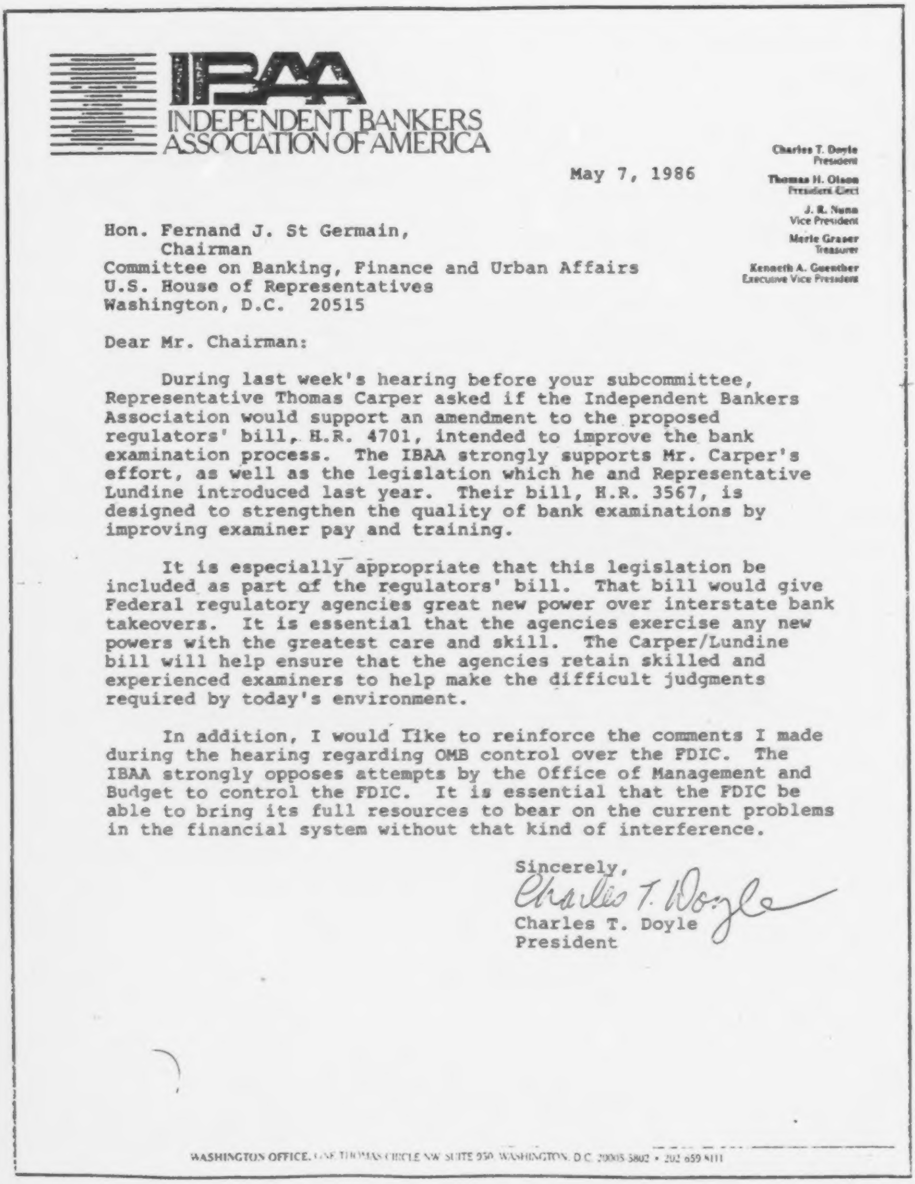
One of the bill's most dramatic provisions is included under the innocuous heading of "Additional Requirements." It directs the Federal Reserve to "prescribe uniform methods of calculating annual rates of simple interest and annual percentage yields required to be disclosed under this Act..." This one-size-fits-all approach goes far beyond disclosure and requires institutions to adopt certain pricing methods dictated by a federal agency.

While H.R. 5232 imposes dramatic requirements on depository institutions, it entirely ignores their competitors, including the money market funds and the insurance industry. Though these industries offer competitive products, the bill does not even attempt to force them to make comparable disclosures. All institutions that accept money from the public should be covered by this kind of rule. Until this is done, the Truth in Savings Act cannot live up to its title and represents an unfair competitive burden to depository institutions.

CONCLUSION

We hope this Committee will include the Carper/Lundine draft in any banking legislation that passes this year. As we indicated in a recent letter to Chairman St Germain (attached), it would be particularly appropriate to make it part of H.R. 4701, the regulators' interstate takeover bill.

On the other hand, we hope that the Truth in Savings Act will be reconsidered. As far as depository institutions are concerned, it goes far beyond the concern that their advertising not be misleading, and threatens to introduce Truth in Lending-style complexity in the area of fee disclosures. At the same time, the Truth in Savings bill completely ignores the strong competitors of depository institutions, the money fund and insurance industries. We hope that these concerns can be addressed before this bill is taken up by this Committee.



IBAA
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May 7, 1986

Hon. Fernand J. St Germain,
Chairman
Committee on Banking, Finance and Urban Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

During last week's hearing before your subcommittee, Representative Thomas Carper asked if the Independent Bankers Association would support an amendment to the proposed regulators' bill, H.R. 4701, intended to improve the bank examination process. The IBAA strongly supports Mr. Carper's effort, as well as the legislation which he and Representative Lundine introduced last year. Their bill, H.R. 3567, is designed to strengthen the quality of bank examinations by improving examiner pay and training.

It is especially appropriate that this legislation be included as part of the regulators' bill. That bill would give Federal regulatory agencies great new power over interstate bank takeovers. It is essential that the agencies exercise any new powers with the greatest care and skill. The Carper/Lundine bill will help ensure that the agencies retain skilled and experienced examiners to help make the difficult judgments required by today's environment.

In addition, I would like to reinforce the comments I made during the hearing regarding OMB control over the FDIC. The IBAA strongly opposes attempts by the Office of Management and Budget to control the FDIC. It is essential that the FDIC be able to bring its full resources to bear on the current problems in the financial system without that kind of interference.

Sincerely,
Charles T. Doyle
Charles T. Doyle
President

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